125-11

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1884.

No. ~~187~~ 153.

SAMUEL S. CISSEL, APPELLANT,

*vs.*

ANTHONY M. DUTCH ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 22, 1884.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1886.

No. 437.

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SAMUEL S. CISSEL, APPELLANT,

*vs.*

ANTHONY M. DUTCH ET AL.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Original Bill. Filed July* 31, 1882.

In Supreme Court, District [of] Columbia. In Equity. No. 8243.

1. ANTHONY M. DUTCH,
2. OTHO DUTCH,
3. THOMAS DUTCH,
4. BECCA SWALES,
5. KITTY HARPER,
6. WILLIAM HARPER, her Husband;
7. KITTY MATTHEWS,
8. HENRY MATTHEWS, her Husband;
9. DECIA WILLIAMS,
10. ANTHONY WILLIAMS, her Husband;
11. JOHN FLETCHER,
12. VINCEN DUVAL,
13. MARIA JOHNSON,
14. MAY REDIES,
15. HATTIE REDIES,
16. BESSIE REDIES,
17. JOHN H. REDIES, } Minors who Sue this Action, by—
18. JOSEPH REDIES, their Father & Next Friend;
19. HANNAH NANCE, &
20. SIMON NANCE, her Husband, Plaintiffs,

*vs.*

ROBERT P. DODGE,
PHILIP A. DARNEILLE,
JOHN T. HALL,
JOHN STUART,
SAMUEL S. CISSEL, Defendants.

2 The plaintiffs aver as follows:

1st. The parties hereto are all residents of said District except said plaintiff Nance and her husband, who are residents of Montgomery county, in the State of Maryland, and def't Hall, whose "whereabouts" are to your complainants unknown.

2nd. That one Thomas Jenifer, who died March 3, 1878, in the city of Washington, said District, was seized and possessed in his lifetime and at the time of his death, by deed dated June 15, 1853, from James F. Wollard, recorded in the land records of said District, book J. A. S., No. 58, pages 86 & 87, of all that lot of land in said city mentioned and described on the ground plat of said city as all that lot lettered "H," in square No. 367, as the same is recorded in the surveyor's office in said District, together with all the improvements thereon, which [it] is prayed may be made part of this bill.

3. That said Thomas Jenifer, by his last will and testament duly probated and allowed by decree of this court, dated on or about April 27, 1878, granted devised, and bequeathed all his property, real and personal, to said plaintiffs, Anthony M. Dutch, Hannah Nance, Maria Johnson, John Fletcher, Vincen Duval, Kitty Harper, Becca Swales, and one Henry Dutch and Maria Redies, deceased, their heirs, executors, and administrators.

3

4. That said plaintiffs, Anthony M. Dutch, Thomas Dutch, Becca Swales, Kitty Harper, Kitty Matthews, Decia Williams, John Fletcher, Vincen Duval, Maria Johnson, Mary Redies, Maria Redies, Bessie Redies, John H. Redies, and Hannah Nance, are all the known heirs-at-law of the late said Thomas Jenifer, and that said plaintiffs sue in this cause as devisees under said last will and testament and as heirs-at-law of said Thomas Jenifer, late of said city, deceased.

5. That some person calling himself Thomas Jenifer, on or about July 8, 1875, made, executed, acknowledged, and delivered to said defendants, Robert P. Dodge and Philip A. Darneille, a forged deed of trust, in the name of Thomas Jenifer, in favor of said Dodge and Darneille, and thereby undertook to convey to said Dodge and Darneille, as trustees, the said described premises, in trust, to
4 secure payment of a pretended and forged promissory note in favor of defendant, John T. Hall, for the sum of one thousand dollars, of even date with said pretended and forged deed of trust, payable in two years from date, with interest at 10 per cent. per annum, payable semi-annually, and caused said pretended and forged trust deed to be recorded in the said records of said District, in book 787, page 439, which they pray may be made part of this bill.

2d 5. That said pretended and forged deed alleges that the same was signed, sealed, and acknowledged by one Thomas Jenifer before one James Nich's Callan, notary public of said District.

6. That said Thomas Jenifer was never indebted to said defendant, said John T. Hall, in said sum of one thousand dollars, or in any other sum whatever, nor ever authorized or empowered any person or persons to borrow from said defendant, John T. Hall, or any one else, any sum whatever, nor ever received from said defendant, John T. Hall, or any other person, said sum of $1,000, or any other sum whatever, or ever authorized any person to receive the same
5 or any part thereof; that said plaintiffs learned of said forged note and deed of trust for the first time on or about July, 1880; that they have made careful search to find the holder of said note, but have been unable to do so; that they were informed on the day said premises were sold that some woman by the name of Callan was the holder, owner of, or had some interest in said note, but they have been unable to learn anything further respecting the owner or holder of said note, and, if they do so, they pray that they may make said holder party defendant hereto.

7th. That said Thomas Jenifer never signed or made his mark to or in any way executed said pretended promissory note to said defendant, John T. Hall, or ever authorized or empowered any person or persons to sign or make his mark to or in any way execute said note.

8th. That said Thomas Jenifer never signed or made his mark to, sealed, acknowledged, and delivered to said Dodge and Darneille said pretended and forged trust deed in favor of defendants,
6 said Dodge and Darneille, or authorized or empowered any

person or persons to sign, make his mark to, execute, acknowledge, and deliver the same as aforesaid.

9th. That said Thomas Janifer never signed, sealed, and acknowledged said pretended and forged trust deed before said J. Nick. Callan, notary public, or authorized or empowered any person whatever to sign, seal, and acknowledge the same.

10th. That said pretended and forged deed of trust, being recorded in the land records of said District as aforesaid, is a cloud on plaintiffs' title in and to said described premises; that the alleged and pretended name or mark of Thomas Jenifer to said deed of trust and promissory note is a rank forgery.

11th. That said Dodge and Darneille, trustees as aforesaid, after advertising said described premises as per notice hereto annexed, did, on the — day of June, 1881, sell the same at public sale to said defendant, John Stuart, but said defendant Dodge refused to execute and deliver a deed of said described premises so sold to said defendant Stuart, alleging to said Stuart as a reason therefor
7 that the name or mark of said Thomas Jenifer to said pretended trust deed and said pretended promissory note was a forgery; and thereupon said Dodge and Darneille, trustees as aforesaid, having again advertised said premises for sale as per notice hereto annexed, did, on the 29th day of May, 1882, sell said premises at public sale to said defendant, Samuel S. Cissel, and on the — day of June, 1882, said Dodge and Darneille, trustees as aforesaid, executed and delivered to said defendant Cissel a deed of said premises, which deed, being recorded in the land records of said District, book 1003, pag- 499, is a cloud on the title of the plaintiffs in and to said described premises, which deed [it] is prayed may be made part of this bill.

12. That plaintiffs are informed and believe that in 1874 and 1875 there was a noted real estate pool which did its business in the office of said James Nich's Callan, said notary public, No. — Louisiana Ave., consisting of the famous Charlie Stewart, now on a com-
8 pulsory leave of absence from this District, and one Henry H. Dudley, deceased, and others to your complainants unknown; that said Dudley made the loan on the real estate that consigned said Stewart to the penitentiary, and it was Stewart's practice to furnish Dudley with names of persons and descriptions of lots and send pretended persons or owners thereof to the office of said Callan and Dudley to have forged deeds of trust prepared, which Dudley then delivered to be acknowledged before said Callan, said notary, and then consigned them to Dodge and Darneille to negotiate loans thereon.

*Prayer.*

The plaintiffs therefore pray as follows:

1. That said defendants, Robert P. Dodge, Philip A. Darneille, John T. Hall, John Stuart, and Samuel S. Cissel, be made party defendants hereto, and that said defendants produce in court said alleged, pretended, and forged deed of trust and said pretended and forged promissory note and also said deed of Dodge and Darneille,

trustees, as aforesaid, to said defendant, Samuel S. Cissel, with
9 their several answers.

2. That your honorable court will pass a decree declaring that said pretended and forged deed of trust and said pretended and forged promissory note and said deed of Dodge and Darneille to said defendant Cissel — cancelled, rescinded, null, and void, and be delivered up; that said defendant Cissel reconvey to plaintiffs said described premises, and that the plaintiffs may have such further and other relief as the nature of the case may require.

H. T. WISWALL,
*Solicitor for Plaintiffs.*

JOHN FLETCHER.
VINCEN DUVAL.
MARIA JOHNSON,
MARY REDIES,
HATTIE REDIES,
BESSIE REDIES,
JOHN H. REDIES,
By JOSEPH REDDIEK,
*Their Father and Next Friend.*
HANNAH NANCE AND
SAMUEL NANCE,
*Her Husband.*
ANTHONY M. DUTCH.
ETHER DUTCH.
BECCA SWALES.
KITTY HARPER,
WILLIAM HARPER,
*Her Husband.*
KITTY MATTHEWS.
HENRY MATTHEWS.
DECIE WILLIAMS.
ANTHONY WILLIAMS.
THOMAS DUTCH.

10 I, Anthony M. Dutch, depose and say I have heard read the foregoing bill of complaint by me and other plaintiffs as above signed; that I know the contents thereof, and that the facts therein stated of my own knowledge are true, and that the facts therein stated upon information I believe to be true.

ANTHONY M. DUTCH.

Sworn to before me this 31st day of July, A. D. 1882.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

*Subpœna to Answer. Issued Aug.* 15, '82.

In the Supreme Court of the District of Columbia.

ANTHONY DUTCH *et al.*, Complainants, *against* ROBERT P. DODGE *et al.*, Defendants. } No. 8243. Equity Docket 22.

AUGUST 15, 1882.

The President of the United States to Robert P. Dodge, Philip A. Darneille, John T. Hall, John Stuart, Samuel S. Cissel, Defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

11

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

*Marshal's Return.*

Not to be found, John T. Hall Summoned the others.
August 16, 1882.

C. E. HENRY, *Marshal.*

*Appearance of Def't No.* 1.

Order-book.

Supreme Court, District of Columbia.

ANTHONY DUTCH *et al.* *vs.* ROB'T P. DODGE *et al.* } Equity. 8243.

Enter our appearance for defendant, Rob't P. Dodge.
Sept. 2d, 1882.

HAGNER & MADDOX.

Appearance as ordered entered by the clerk.

*Appearance of Def'ts* 2 & 5.

Order-book.

Supreme Court, District of Columbia.

ANTHONY M. DUTCH *et al.* *vs.* ROB'T P. DODGE *et al.* } 8243. Equity.

Please enter our appearance for the defendants, Philip A. Darneille and Samuel S. Cissel.

T. A. LAMBERT.
F. W. JONES.

Appearance as ordered entered by the clerk.

12 *Answer of Dodge. Filed Sep.* 22, 1882.

In the Supreme Court of the District of Columbia.

DUTCH *et al.* *vs.* DODGE *et al.* } Equity No. 8243. Docket 22.

The separate answer of Robert P. Dodge, saving and reserving to himseft all proper exceptions to the bill, respectfully answering, says:

1, 2, 3, & 4. To paragraph- 1, 2, 3, 4, defendant says that he admits that Darneille, Cissel, and himself are residents of the District of Columbia, but as to the date of the death of said Jenifer he is informed it occurred in the year 1878; that he is ignorant of all the other allegations of said four paragraphs.

1st 5, 2d 5, 6, 7, 8, 9, 10. To allegations contained in the two paragraphs numbered 5, and also paragraphs numbered 6, 7, 8, 9, & 10, defendant says, upon information and belief, that they are untrue, and aver that said note and deed of trust are the genuine deeds of the veritable Thomas Jenifer who owned the said property, and that he, said Thomas Jenifer, at or about the date of said instruments, did actually receive from Mrs. B. W. Kennon the said sum of
13 $1,000.00 which she, the said Mrs. Kennon, loaned on the security of said note and deed of trust.

11. Answering the allegations of the eleventh paragraph this defendant admits that he, together with his co-trustee, offered said property for sale under said deed of trust in the month of July, 1881 (not June, as alleged in the bill), and that John Stuart being the highest bidder therefor, the property was struck off to him and he made a deposit of $100.00 with the auctioneer, Thomas Dowling, but that he, the said Stuart, afterwards refused to comply with the terms of sale and demanded back his deposit, which was paid to him, as I am informed. I deny that I refused to execute a deed for the property, as alleged. I deny that I alleged to said Stuart or any other person that said instruments, or either of them, were forgeries, but I admit that about that time there were rumors of forged notes and deeds of trust in connection with the operations of certain colored persons who have therefore since been made amenable to the law,
14 and that on that account some person alleged that these instruments were of that fraudulent character, and I said thereupon in substance that if they were forgeries I would not be a party to any action under them. Upon making further and thorough examination and investigation I ascertained them to be genuine, and thereupon we, the trustees, made the sale on the 29th of May, 1882, to said defendant, S. S. Cissel, and conveyed the property to him by the deed recorded in Liber 1003, folio 499, mentioned in said bill. Said sale was made *bona fide* and in pursuance of the power of sale conferred by said deed of trust, the purchaser complied with the terms of said sale, and the price was a fair one for the property.

12th. In answer to the 12th paragraph defendant justly and in-

dignantly denies that there was any such practice of negotiating loans on forged deeds of trust as alleged in said paragraph by the firm of Dodge and Darneille, and declares that said allegation is utterly false; and as to other allegations of said paragraph
15 he has no definite information, but believes them to be false.

Further answering, I aver that I have no interest in the matter in this case, save as trustee in said deed of trust, and that complainants have not made out in their bill a case which will entitle them to relief against me, and, having fully answered, this defendant prays to be hence dismissed, with his proper costs in this behalf sustained, as he will ever pray, &c.

ROB"T P. DODGE.

HAGNER & MADDOX,
*Of Counsel for R. P. Dodge.*

DISTRICT OF COLUMBIA, *sct:*

Before me, in my district aforesaid, personally appeared Robert P. Dodge, who, being first duly sworn, deposes and says: I have carefully read the annexed answer by me subscribed and know the contents thereof, and such matters as are therein stated as matters of knowledge I know to be true, and such as are therein
16 stated as matters of belief I believe to be true.

ROB"T P. DODGE.

Sworn to and subscribed before me this sixth day of September, A. D. 1882.

[SEAL.]

ROS. A. FISH,
*Notary Public.*

*Answer of Darneille. Filed Sep.* 22, 1882.

In the Supreme Court of the District of Columbia.

ANTHONY M. DUTCH *et al.*
*vs.*
ROBERT P. DODGE *et al.* } 8243. Eq. Dock. 22.

Separate answer of Philip A. Darneille.

1, 2, 3, 4. Saving and reserving all and all manner of exception to the many errors in said bill of complaint contained, for answer thereto and to so much thereof as I am advised it is material for me to answer, I say I am informed and believe that Thomas Jenifer died in March, in the year 1878, owning the property mentioned. Messrs. Dodge, Cissel, and myself reside in the District of Columbia. Of all the other allegations contained in the first four paragraphs of said bill of complaint I have no knowledge or information,
17 save what is furnished by the bill.

1st 5, 2d 5, 6, 7, 8, 9, 10. Answering the allegations contained in the two paragraphs of said bill numbered 5, also those numbered 6, 7, 8, 9, and 10, I say, on information and belief, that they are false an- untrue, except so far as they may consist with the

following facts, namely: The note and deed of trust mentioned were executed and delivered by the veritable and identical Thomas Jenifer, who was the owner of the property mentioned, and were given to secure the sum of one thousand dollars ($1,000) actually loaned to said Thomas Jenifer by Mrs. Brittania W. Kennon, and the said sum was applied in part to the payment of taxes then due upon said property, all this at or about the date of said note and deed of trust, and the averments of forgery as to either of said instruments are false and untrue and are now set up without any foundation in point of fact.

In the year 1880 a person named Dutch, whom I presume to be the complainant, Anthony M. Dutch, came to me and asked
18 me to execute a deed of release of said deed of trust, and then told me that the said Thomas Jenifer had paid off and satisfied the said note of $1000, but had omitted to obtain a release at the time. I required that he should produce the note in evidence of such payment, to which he replied that he could not find the note, although he had searched for it, but he was willing to make oath that the deceased, Thomas Jenifer, in his life-time, had told him (said Dutch) that he had paid the debt. I declined to execute the release, and after enquiry found that Mrs. Kennon had the note; that it had not been paid or satisfied in any part or manner. There was then no pretence or claim made by said Dutch that said note and deed were forgeries, but, to the contrary, a distinct recognition of their genuineness, accompanied with the claim of payment of the note, and consequently of the right to a release of the deed of trust.

11. In answer to the allegations of the 11th paragraph of said bill, I admit that my co-trustee, Robert P. Dodge and myself
19 attempted to make a sale of said property, under and by virtue of said deed of trust, in the month of July, 1881 (and not June, as alleged), and that John Stuart became the purchaser, and made a deposit of $100 with the auctioneer, but afterwards declined to comply with the terms of sale, and demanded from (and received) the auctioneer his deposit; but I deny that my co-trustee refused to execute any deed. I admit that my said co-trustee and myself sold the said property on the 29th day of May, A. D. 1882, to Samuel S. Cissel, and conveyed the same to him by deed recorded in liber No. 1003, folio 499, &c., and I say that said sale was made in strict pursuance of the power of sale contained in said deed of trust; was fair and *bona fide* in all respects, and without any notice except rumors of an unsatisfactory and informal character, which I could trace to no reliable source. That said Cissel fully complied with the terms of sale, and after payment of the purchase-money received said deed, and said property brought its fair value, viz: $1,700.

20 12. Except that allegation which states that H. H. Dudley consigned to my late firm of Dodge & Darneille forged deeds of trust upon which to negotiate loans, which I aver is utterly false and untrue, I have no knowledge or information as to the allegations contained in the 12th paragraph of said bill of complaint, but

I believe them to be false and untrue and fabricated for the purpose of carrying into effect the obvious designs of the plaintiffs to discredit and destroy genuine instruments executed by the deceased, Thomas Jenifer.

Further answering I say that I have no interest whatever in the matters involved in this proceeding, acting only as trustee therein, and that the complainants have not made out any case to entitle them to any recovery against me, and, having fully answered, I pray to be hence dismissed with costs.

PHILIP A. DARNEILLE.

F. W. JONES,
T. A. LAMBERT,
*Sol'rs for Def't Darneille.*

I, Philip A. Darneille, do solemnly swear that I have read
21 the foregoing answer by me subscribed and know the contents thereof, and that the matters therein stated as of my own knowledge are true, and those stated on information and belief I believe to be true.

PHILIP A. DARNEILLE.

Subscribed and sworn to this 19th day of September, A. D. 1882, before me.

[SEAL.] THOMAS W. SORAN,
*Notary Public.*

*Answer of Cissel. Filed Sep.* 22, 1882.

In the Supreme Court of the District of Columbia.

ANTHONY M. DUTCH *et al.*
*vs.*
ROBERT P. DODGE *et al.*
} No. 8243. Eq. Docket 22.

Separate answer of Samuel S. Cissel.

This defendant, saving all manner of exception to the many errors and uncertainties in said bill of complaint contained, for answer thereto and to so much thereof as he is advised it is material and necessary for him to make answer, says:

1, 2, 3, 4. I have no knowledge or information as to the matters set forth in the first four paragraphs of said bill of com-
22 plaint, and leave the plaintiffs to the proof thereof, except that I admit that my codefendants, Robert P. Dodge, Philip A. Darneille, and myself are residents of the District of Columbia. I have no knowledge, acquaintance, or information as to any other of the parties to the bill of complaint except such as is furnished by the bill itself.

5. I am informed and verily believe that the allegations of the first paragraph numbered 5 in said bill of complaint are false and untrue, and say that the Thomas Jenifer who executed the said deed of trust and note in said paragraph was the veritable and identical Thomas Jenifer who owned the property described in said deed of trust, and

that said two instruments of writing are in point of fact the genuine and proper deeds of the said Thomas Jenifer.

2d 5. I admit that said deed of trust was signed, sealed, and acknowledged before James Nicholas Callan, who was at the time a notary public in and for the District of Columbia, duly commissioned and qualified and authorized to take the acknowledgment thereof, but I do not admit that said deed was forged, as is alleged in the second paragraph marked 5 in said bill of complaint.

6. Answering the allegations of the 6th paragraph of said bill of complaint on information and belief, I say whether Jenifer was indebted to said Hall or ever authorized any person to borrow money from said Hall or any other person, or whether plaintiffs first learned of the existence of said trust deed in July, 1880, or whether they made careful search for and could not find the holder of said note, or whether they were informed on the day of sale some woman named Callan was the holder thereof or had some interest, or whether they were unable to learn anything further respecting the owner or holder of said note is wholly unknown to me and is immeterial; but I aver and say that said Jenifer, by himself or his duly authorized agent, did receive the sum of one thousand dollars ($1,000) at or about the time of the execution of said deed of trust and note from Mrs. Brittania W. Kennon, who loaned said sum of money on the security of said note and deed of trust.

7, 8, 9. On information and belief I deny the allegations of the seventh, eighth, and ninth paragraphs of said bill of complaint, and say they are false and untrue, and I aver that said Thomas Jenifer did sign and make his mark both to said note and deed of trust and acknowledged the same in due and proper form before James N. Callan, who, as a notary public, was an officer duly empowered to take the acknowledgment of deeds conveying interests in lands in the District of Columbia.

10. Answering the allegations of the 10th paragraph of said bill of complaint, I deny that said deed of trust and note are forgeries, or that said deed is a pretended or forged deed, or that its being recorded is a cloud upon plaintiffs' title, and say that said deed of trust having been duly executed, and its provisions in respect to a sale having been duly followed and pursued without any let, hindrance, molestation, or notice of any kind whatever, and strictly in pursuance of the powers therein conferred upon the trustees therein named, the whole and entire title to the property was transferred and passed to this defendant, a *bona fide* purchaser, without notice of any kind whatever.

11. Answering the allegations of the 11th paragraph of said bill of complaint on information and belief, I say that since the bill was filed herein, and not before, I have been informed that said Dodge and Darneille (my codefendants) attempted to make a sale of said property to one John Stuart in July, and not in June, 1881, as alleged in said paragraph; but I am informed and believe that said Stuart refused to comply with the terms of sale because some of the plaintiffs impressed him (Stuart) with the false belief that the said deed

of trust was not genuine; but I deny that said Robert P. Dodge refused to execute a deed or alleged that the said deed of trust and note was a forgery; all this on information received since the filing of said bill of complaint.

26 I admit that at a sale of said property, duly advertised to take place on the 29th day of May, 1882, by Dodge and Darneille, trustees, I became the purchaser, being the highest bidder, of said lot lettered H in Callan & Wilson's sub. of square No. 367 in the city of Washington aforesaid, and that the same was conveyed to me, after I had made full payment of the purchase-money, pursuant to such sale, by deed recorded in liber No. 1003 at folio 499, and that the same conveyed to me the entire title to said property. I do not admit that it is but a cloud upon the title, but say that all title of the said Thomas Jenifer and those who may claim under him is absolutely barred and foreclosed by said sale and deed. I say that said sale was regular and *bona fide* in all respects, made after due advertisement and strictly pursuant to the powers contained in said deed, and without any notice whatever of any claim of title by the plaintiffs to my knowledge.

27 12. I have no information or knowledge of the matters alleged in the 12th paragraph of said bill of complaint, save such as is contained in the affidavit of James N. Callan, Esquire, which as a part of my answer I file herewith, and upon that I say they are false and untrue; moreover that they are immeterial and cannot affect me in any manner.

Further answering I say that the complainants have not by their said bill of complaint made out any case to entitle them to any relief or recovery against this defendant, and I pray the same advantage as if I had specially demurred to the said bill.

And having fully answered this defendant prays to be hence dismissed with costs.

SAM'L S. CISSEL,
By T. A. LAMBERT &
F. W. JONES,
*Solicitors.*

DISTRICT OF COLUMBIA, *to wit:*

I, Samuel S. Cissel, do solemnly swear that I have read the foregoing answer by my solicitor subscribed and know the contents thereof, and that the matters and things therein stated as of
28 my own knowledge are true, and those stated on information and belief I believe to be true.

SAMUEL S. CISSEL.

Subscribed and sworn to this 11th day of September, A. D. 1882, before me.

[SEAL.] JOSEPH W. DAVIS,
*Notary Public.*

EXHIBIT "A."

*Aff't of Callan. Filed Sep.* 22, 1882.

DISTRICT OF COLUMBIA, *to wit:*

James N. Callan, being duly sworn, deposes and says:

I am the James N. Callan whose name appears as the witness to the promissory note dated July 8th, 1875, for $1,000, payable to the order of John T. Hall and signed by Thomas Jenifer by his mark, and also as the witness and the notary public taking the acknowledgment of the said Thomas Jenifer to the deed of trust bearing the same date and conveying lot lettered H in Wilson & Callan's subdivision, in square numbered three hundred and sixty-seven (367), in Washington city, to Robert P. Dodge and Philip A. Darneille to secure the payment of said note, &c. The bill in equity filed
29 by Anthony M. Dutch & others in cause No. 8243, docket 22, has been shown me, and my attention directed specially to paragraphs numbered 7, 8, 9, 10, and 12 thereof.

It is not true that in the years 1874 and 1875 any real estate pool did business in my office, composed of Charles W. Stewart, H. H. Dudley, and others, or any other persons, and I think it probable that the plaintiffs have confounded me with Charles C. Callan, who was a notary public and had an office on Louisiana avenue during these years. I had no office on Louisiana avenue until the first day of January, A. D. 1876, and then had no real estate pool or any other pool doing business therein.

I recollect the circumstances attending the execution of said promissory note and deed of trust dated July 8, 1875, by the said Thomas Jenifer, whom I had known ever since I was a small boy. I was called upon as a notary public to attend to the execution of said note and deed of trust, and went to the residence of said Thomas Jenifer (which was on O street, between 9th and 10th streets, on lot H., sq. 367) for that purpose. Jenifer, when I entered, said
30 he expected Mr. Callan to come to take the acknowledgment; that he knew him well, as he had formerly owned the property in question, and it was through him that he (Jenifer) had become the purchaser. I found that he meant Nicholas Callan, Esquire, my uncle, and told him of my relationship to him, at which Jenifer seemed much pleased and gratified, and expressed himself to the effect that he was glad that the nephew of his old acquaintance had come to transact the business. The note and deed of trust were then shown and fully explained to said Thomas Jenifer by me. He understood it thoroughly, and mentioned in brief terms the subject of the matter, namely, that he was going to borrow $1,000, and give the property upon which he lived as security for its payment. The said Jenifer then made his mark, touching the pen while the mark was made, to both the promissory note and the deed of trust, in my presence, and then acknowledged the said deed to be his act and deed, and I signed my name as witness to

both papers, and also certified to the due signing, sealing,
31 and acknowledgment of the said deed of trust, affixing my notarial seal thereto. I have, as a notary public, taken the acknowledgment of many deeds, and in all my experience no deed was ever executed more deliberately or formally or with a more complete understanding of the matter in hand than was this deed of trust and note, and I knew that the Thomas Jenifer who executed these papers was the identical Thomas Jenifer who owned the property conveyed in said deed, and had known him for many years; and the allegations in the 7th, 8th, 9th, and 10th paragraphs of said bill are utterly false and untrue, as is also the entire 12th paragraph so far as it refers to or alludes to myself.

The circumstances surrounding the execution of this deed and note were impressed upon my memory, because of the facts that I was required by reason of Janifer's sickness and confinement at home to go to his house, although I had been in the habit of seeing him frequently at his place of employment, viz., the store of the late Edward Hall, where he was employed for a long time,
32 and also by the interest he manifested in my family after he was informed I was the nephew of the Mr. Callan whom he said he had expected. He asked me concerning the health of my aunt and uncle, and expressed wishes for their welfare, &c., thereby making a marked impression of the interview upon my recollection, which is not usually the case on such occasions.

And further deponent sayeth not.

JAMES N. CALLAN.

Subscribed and sworn to this thirty-first day of August, A. D. 1882, before me.

[SEAL.] SAMUEL H. WALKER,
*Notary Public.*

*Motion to File Amended Bill. Filed Sep.* 28, 1882.

In Supreme Court, District Columbia. In Equity.

DUTCH *et al.*
*v.*
DODGE *et al.* } No. 8243.

Now come plaintiffs, by H. T. Wiswall, their solicitor, by leave of court first had and obtained, [and] move to amend their said bill as follows:

1. That said defendants, Robert P. Dodge, Philip A. Dar-
33 neille, John T. Hall, John Stuart, Samuel S. Cissel, and Brittania W. Kennon, may be parties defendants to said bill.

2. Add to bill an additional paragraph as follows: "13th. That said plaintiffs since filing their bill are informed and believe said forged instruments came into possession of one Brittania W. Kendon, to plaintiffs unknown, and when and under what circumstances to plaintiffs unknown; that said forged note and trust deed seem, from defendant Darneille's answer herein filed, and from his admission on the day of said sale, to have been in possession or control of said Brittania seven years after their making, unpaid and unsatis-

fied in whole or part. Plaintiffs know not and have no means of learning by whose request or agency said defendants Dodge and Darneille, trustees, advertised for sale and sold said premises. But they now believe from what dropped from said defendant Darneille's lips May 29, 1882, the time and at the place of said sale, taken in connection with certain allegations of his answer, that said Brittania W. Kennon was the holder of said instruments May 29, 1882,
34 and ordered and requested said advertisement and sale; that defendant Darneille has purposely withheld from plaintiffs all knowledge and means of learing concerning the possession, control, custody, or ownership of said forged note and forged trust deed, and thereby deprived plaintiffs of all ability to further enlighten the court in these respects.

Add to prayer of bill an additional prayer as follows:

"1½. That said Brittania W. Kennon be made party codefendant to this bill; that with her several answer- thereto she state fully and particularly when, of whom, under what circumstances, and where she procured possession, control, custody, or ownership, or interest in said forged instruments, and what, if anything, she paid therefor, and whether she requested and ordered said defendants, Dodge and Darneille, trustees mentioned in said bill, to advertise for sale and to sell said premises, and what amount of money she received from said trustees, or either of them, as the fruit of said sale."

ANTHONY M. DUTCH,
OTHER DUTCH,
35 THOMAS DUTCH,
BECCA SWALES,
KITTY HARPER,
WILLIAM HARPER,
*Her Husband,*
KITTY MATTHEWS,
HENRY MATTHEWS,
*Her Husband,*
DECIA WILLIAMS,
ANTHONY WILLIAMS,
*Her Husband,*
JOHN FLETCHER,
VINCEN DUVAL,
MARIA JOHNSON,
MARY REDIES,
HATTIE REDIES,
BESSIE REDIES,
JOHN H. REDIES,
*Minors who sue this Action*
By JOSEPH REDIES,
*Their Father and Next Friend,*
HANNA NANCE AND
SIMON NANCE,
*Her Husband,*
By H. T. WISWALL,
***Their Counsel and Solicitor.***

I, Anthony M. Dutch, one of the above plaintiffs, depose and say I have heard read the foregoing amended bill of complaint, by my solicitor, as above signed, and that I know the contents thereof, and that the facts therein stated of my own knowledge are true, and that the facts therein stated upon information and belief I believe the same to be true.

ANTHONY M. DUTCH.

I, Anthony M. Dutch, depose and say I am one of the above plaintiffs, and that the above motion is made not for the purpose of delay or vexation, and that the matters of said proposed amendment *is* material and unknown when the bill was filed except in the respects above named, and could not have been with reasonable diligence sooner introduced into said bill.

36

ANTHONY M. DUTCH.

Sworn to before me this 28th day of September, 1882.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

*Aff't of Dutch. Filed Oct.* 6, 1882.

In Supreme Court, District [of] Columbia. In Equity.

DUTCH *et al.*
*vs.* } 8243.
DODGE *et al.*

I, Anthony M. Dutch, depose and say I am plaintiff in above case. In the month of March and to middle of April, 1875, my cousin, late Thomas Jenifer, then living in his house near the alleys east and south of his lot, which fronts on O, was confined to his bed in a helpless condition, his left leg being paralyzed. I and my wife had the sole care of him. I collected his rents and paid his bills. I procured Dr. B. M. Beall to attend Jenifer three or four times while in this house. I then told the Dr. I was going to take Jenifer to my house, on Samson St. and would inform him when he, the Dr., was wanted there. I went for Dr. Beall two times early in May, 1875, near as I recollect, some two or three weeks after Jenifer came to my house, on Samson St., and Dr. Beall attended Janifer at my house nearly every day, using an electrical machine, which I ran for the Dr., the only electrical machine I ever saw. It helped Jenifer some. I remember seeing Dr. Beall write a receipt for the $25 paid him in Jenifer's bed-room beside his bed, which I have kept among my papers ever since, and gave the other day to Mr. Wiswall, my lawyer. The receipt was written by Dr. Beall at the very time the $25 was paid. I moved Jenifer to my house, on Samson St., near as I can fix the date, on the 18th of April, 1875. Henry Prater and myself took him on a bed in Mr. Green's market wagon from his house, on the alley on rear of his lot, to my house, on Samson St., where he remained a feeble, helpless paralytic till he

37

died, March, 1878. Joseph Clay occupied Jenifer's house, on
38 the alley, May, June, and part of July, 1875. Clay came to my house one Sunday and paid $5 for the house for May in advance. Refusing to pay rent for June and July, he was turned out and then moved into Aunt Nelly's house, on Jenifer's lot. Refusing to pay rent, he was, about Nov., moved out. After Clay had lived a few weeks in Jenifer's house he came and said he wanted the stuff Jenifer left in one of the rooms taken away, and I and Mr. Dillard Dashill, with horse and cart, took it to my house, on Samson St.

ANTHONY M. DUTCH.

Subscribed and sworn to before me this 4th day of October, A. D. 1882.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

*Aff't of Sarah Wright. Filed Oct.* 6, 1882.

In Supreme Court, District of Columbia. In Equity.

DUTCH *et al.*
*vs.*
DODGE *et al.* } No. 8243.

I, Sarah Wright, depose and say I have rented and lived with my family in the house of Thomas Jenifer, late of this city, for
39 the last nine years—since April, 1873—on O St., being the only dwelling-house said Jenifer owned on O St. I have known Jenifer very well since 1870. I remember when he was sick in his house in the rear of his lot, on alleys south and east of his lot, which fronted on O St., in the months of February, March, and part of April, 1875. He fell out of bed one morning and I helped put him in. He was perfectly helpless from paralysis. About the 18th of April, 1875, his cousin, Anthony Dutch, came with a market wagon and took him to his house, in Samson St. I spread blankets in the wagon to lay him on. I remember the weather was cool that day. I often went to see Jenifer while he was sick. I know when Jo. Clay and wife, Frances—she being sister to my son'-, Henry's, wife—moved into the house out of which Jenifer was taken up to Dutch's house. It was the last of April, about two weeks after Jenifer went out. Clay lived there May, June, and part of July, I think, and then was moved out and went into Aunt Nelly's house, a rod or so off. Joe, not pay- the ground rent, was turned out, and
40 tore the house down and carried the stuff off in December. It was raining the morning he did so. Jenifer never, to my knowledge, ever lived on O St.

her
SARAH x WRIGHT.
mark.

Witness:
H. T. WISWALL.
C. S. SHREVE.

Subscribed and sworn to before me this third day of Oct., A. D. 1882.

[SEAL.] CHAS. S. SHREVE,
*Notary Public, D. C.*

*Aff't of Wiswall. Filed Oct.* 6, 1882.

In Supreme Court, District of Columbia. In Equity.

DUTCH *et al.*
*vs.*
DODGE *et al.* } No. 8243.

I, H. T. Wiswall, depose and say Kate Harper (wife of William), in the month of Nov., 1874, employed me to prosecute suit before Justice Weaver to give her possession of west half of lot 40, Sq. 209, being No. 1428 Samson St., between 14 and 15 N. W. After she was in possession thereof I heard that Lucinda Plumer, Josiah Wilson, Sophia Wilson, and Martha Wilson, the mother and sisters of Richard Wilson, the father of my client, Kate, claimed that Kate was not their Brother Richard's child and intended to test the
41 matter in court. When, therefore, Kate, about May 1st, 1875, applied to me to procure a loan on her property I informed her what I learned about her right to the property and requested her to give me name and residence of some intelligent person who knew her history from birth. With others she took me to Thomas Jenifer, whom I found in a small back bed-room on the first floor in the house of Anthony M. Dutch, his cousin, No. 1426 Samson St., bet. 14 & 15 N. W. He was lying in bed helpless, his left leg being paralyzed. On enquiry concerning Kate, Jenifer said that Richard Wilson married his cousin, the mother of Kate, and, though Kate was born before the nuptial knot had been tied nine months, still Richard Wilson always, so far as he knew, treated, acknowledged, owned, and introduced Kate as his own child. I found Jenifer a man of but few words, yet sensible and clear-headed. Relying mainly on Jenifer's statement and Kate's affidavit, I procured the loan of Rohrer. The deed of trust to secure the loan is in
42 the name of William and Kitty Harper to M. Rohrer, and was recorded May 10, 1875, in the land records, book No. 783, page 288. I never knew or heard of such a man as Thomas Jenifer until Kate took me to him to learn the facts of her history above stated to procure this loan.

After becoming thus acquainted with Thomas Jenifer, he sent for me several times. I made his will on two different occasions. He also wanted advice about his tenants. He employed me to eject Joseph Clay from his house situated in the rear of his lot near the corner of the alley running south from O St., and the alley south of his lot, being the house, as he informed me, wherefrom he, Jenifer, moved about the 20th April, 1875, when he came to Samson street, as above stated, where he was living all the time I ever knew him. He said Clay came to him on Samson street and paid him 5 [dollars] for, I think, month of May. But he was owing him for months of

June and July, and he wanted him turned out of his house. Notice was served on Clay and he went out and moved into Aunt
43 Nan-y's house, situate on land of Jenifer's. Clay refusing to pay the ground rent, I served thirty days' notice on Clay, dated Nov. 6, 1875 (as appears from the notice here exhibited). As near as I recollect, there was due from Clay rent for months of June and July, 1875, for the first house, and for August, September, October, three months' ground rent.

H. T. WISWALL.

Subscribed and sworn to before me this 4th day of October, A. D. 1882.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

*Aff't of B. M. Beall. Filed Oct.* 6, 1882.

In Supreme Court, District of Columbia. In Equity.

DUTCH *et al.*
*vs.*
DODGE *et al.* } No. 8243.

I, B. M. Beall, depose and say I am, and for the last eleven years have been, a practicing physician in Washington city, and my residence is No. 941 Rhode Island avenue. I professionally attended the late Thomas Jenifer, in April, I think, 1875, at his house, near corner of alleys east and south of his lot, which fronts on O.
44 I attended him there a few times, when he said he was going to his cousin's house on Samson street. I began to attend Jenifer again in May following, I think, at the house of his cousin, Anthony Dutch, No. 1426 Samson street. He was all the time I attended him suffering from severe paralysis of the left leg. I applied to him electricity, and Anthony Dutch turned the electrical machine. He was all the time of my attendance lying completely helpless in bed. On one of my visits on Samson street Janifer asked how many visits I had made him, saying he had marked them down on the wall beside his bed, which was in a small back bed-room on first floor, and made the number between forty and fifty, and asked if I would be satisfied with a dollar a visit. He then took from under his pillow twenty-five dollars and handed me, and I then at the time he paid me wrote him a receipt by his bed-side, and dated it the day he paid me for twenty-five dollars "on account" of my bill against him for my services. I remember writing the receipt for the
45 $25 he paid me on account on a small table near his bed in the small back bed-room in Dutch's house, on Samson street, at the very time he paid me, and I am quite sure the receipt now shown me, written in my handwriting, for $25 on account received of Janifer, and dated July 1, 1875, is the identical receipt I wrote and

gave Jenifer when he paid me $25 in his sick room on Samson street, on the back of which I now write my name and date Oct 3, 1882.

B. M. BEALL, *M. D.*,
941 *R. I. Ave.*

Sworn to before me Oct. fifth, 1882.
[SEAL.]

CHAS. S. SHREVE,
*Notary Public, D. C.*

*Receipt.*

$25.00. WASHINGTON, D. C., *July 1st*, 1875.

Rec'd of Mr. Jenifer twenty-five dollars, it being a part of my account for professional services.

B. M. BEALL, *M. D.*

(B. M. B. No. 1.)

Endorsed: B. M. Beall, M. D. October 3rd, 1882.

46 *Aff't of Eliza Rollins. Filed Oct.* 6, 1882.

In Supreme Court, District [of ] Columbia. In Equity.

DUTCH *et al.*
*vs.*
DODGE *et al.*
No. 8243.

I, Eliza Rollins, wife of Henry Rollins, depose and say I reside at No. 915 O St., where I have lived for the last six years. I knew Thomas Jenifer seven or eight years ago. When my sister Frances, wife of Jos. Clay, lived on 9th street in 1874 and spring of 1875 I was in service at Gen. Gilmore's, E St., bet. 6 and 7, now living on 9th St., and made my home at her house, spending a night occasionally and Sundays when not in service. Joseph Clay and wife—my sister Frances—moved from 9th street about the last of April, 1875—I remember it was cool weather—into the house of Thomas Jenifer, situate near corner of alleys east and south of his lot fronting on O St., the same house Jenifer moved from some two weeks before when they took him to Anthony Dutch's house, on Samson street. I went to this house of Jenifer with them and made my home with
47 them, spending some nights, Sundays, and days when not in service. I remember Clay told me and Frances he had paid Jenifer for the month of May in advance, and that he was not going to pay him any more rent in advance; he couldn't afford to do it and wouldn't. We lived in this house of Jenifer the months of May, June, and part of July, I think. We then moved out of this house into a house about a rod off, situate on Jenifer's ground and owned by Aunt Nancy or Nellie, and along in December, I think, Clay pulled the house down and carried off the stuff. Thomas Jenifer never lived in any house on O St. to my knowledge.

her
ELIZA x ROLLINS.
mark.

Witness:
H. T. WISWALL.
C. S. SHREVE.

Subscribed and sworn to before me this third day of Oct., A. D. 1882.

[SEAL.] CHAS. S. SHREVE,
*Notary Public, D. C.*

48 *Decree Allowing Bill to be Amended. Filed Oct.* 6, 1882.

In Supreme Court, District [of] Columbia. In Equity.

DUTCH *et al.* *vs.* DODGE *et al.* } No. 8243.

On motion of H. T. Wiswall, solicitor for plaintiffs, it is this 6th day of October, 1882, ordered and decreed that plaintiffs have leave to amend their said bill in the particulars mentioned in the petition of the plaintiffs, filed the 28th day of September, 1882.

A. B. HAGNER,
*Asso. Justice.*

*Amended Bill. Filed Oct.* 11, 1882.

In Supreme Court, District [of] Columbia. In Equity.

ANTHONY M. DUTCH *et als.* *vs.* ROBERT P. DODGE *et als.* } No. 8243.

Plaintiffs, by leave of court first had and obtained, amend their bill in the following particulars:

1. Brittania W. Kennon, resident of said District, is made party codefendant.

2. The following paragraph, No. 13, is added thereto: "13th. That plaintiffs, since filing their original bill, are informed and believe said forged instruments came into possession of said defend-
49 ant, Brittania W. Kennon (to plaintiffs unknown), when and under what circumstances also to plaintiffs unknown, but from defendant Darneille's answer herein filed, and from his remarks, May 29, 1882, the day of said last sale, they believe and so charge that said forged note and forged deed of trust have been in possession or control of said defendant Kennon nearly seven years since their making, unpaid and [un]satisfied in whole or part. Plaintiffs know not and have no means of learning by whose request, order, or agency said defendants, trustees Dodge and Darneille, advertised for sale and sold said premises; but they now believe, from what they learned from said Darneille at said last sale and from his said answer, that said defendant Kennon was the holder of said instruments in the month of July, 1881, and May 29th, 1882, and requested and ordered said advertisements and sales; that defendant Darneille having withheld from plaintiffs all knowledge of and means of learning the possession, custody, control, or ownership of said instruments other and further than above mentioned,
50 the plaintiffs are deprived of all ability to enlighten the court more in these respects.

3. The following paragraph, No. 1½, is added to the prayers of said bill: No. 1½. That said defendant, Brittania W. Kennon, be made party codefendant hereto, and that with her several answer thereto she state fully and particularly when, of whom, under what circumstances, and where she procured possession, control, custody, ownership, or interest in said forged instruments, and what, if anything, she paid therefor, and whether she requested and ordered said trustees, said Dodge and Darneille, or either of them, to advertise for sale and to sell said premises, and what amount of money she received from said trustees, or either of them, as the fruit of said last sale, and that plaintiffs may have such other relief as the nature of the case requires.

ANTHONY M. DUTCH.
OTHER DUTCH.
THOMAS DUTCH.
BECCA SWALES.
KITTY HARPER,
WILLIAM HARPER,
*Her Husband.*
KITTY MATTHEWS,
HENRY MATTHEWS,
*Her Husband.*
DECIA WILLIAMS,
ANTHONY WILLIAMS,
*Her Husband.*
JOHN FLETCHER.
VINCEN DUVAL.
MARIA JOHNSON.
MARY REDIES,
HATTIE REDIES,
BESSIE REDIES, AND
51 JOHN REDIES,
*Minors who sue this Action*
By JOSEPH REDIES,
*Their Father and Next Friend.*
HANNAH NANCE AND
SIMON NANCE,
*Her Husband, Plaintiffs.*

The defendants to the original bill of complaint and amended bill are Robert P. Dodge, Philip A. Darneille, John T. Hall, John Stuart, Samuel S. Cissel, and Brittania W. Kennon.

ANTHONY M. DUTCH.

H. T. WISWALL,
*Solicitor for Plaintiffs.*

I, Anthony M. Dutch, one of the above-named plaintiffs, depose and say that I have heard read the foregoing amended bill of complaint by me and my coplaintiffs, by my solicitor signed, as above, and that I know the contents thereof, and that the facts therein stated of my own knowledge are true, and that the facts therein stated upon information and belief I believe the same to be true.

ANTHONY M. DUTCH.

Subscribed and sworn to before me this 9th day of October, A. D. 1882.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

52 *Subpœna to Answer Amended Bill. Issued Oct.* 11, 1881.

In the Supreme Court of the District of Columbia. October 11th, 1882.

ANTHONY M. DUTCH *et al.*, Complainants,
*against*
ROBERT P. DODGE *et al.*, Defendants.
} No. 8243. Equity Docket 22.

The President of the United States to Britannia W. Kennon, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the amended bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

*Marshal's Return.*

Summoned Oct. 18, 1882.

C. E. HENRY, *Marshal.*

*Decree Pro Confesso vs. Britannia W. Kennon. Filed Dec.* 6, '82.

In Supreme Court, District of Columbia. In Equity.

ANTHONY M. DUTCH *et al.*
*vs.*
ROBERT P. DODGE *et al.*
} No. 8243.

53 On motion of counsel for plaintiffs, and it appearing to the court that on the 18th day of October, 1882, personal service was made on the defendant, Britannia W. Kennon, in plaintiff's amended bill, and that said Britannia has not entered her appearance or made answer therein, it is therefore this 6th day of December, 1882, ordered that said amended bill be taken *pro confesso* as against said defendant Britannia.

A. B. HAGNER,
*Asso. Justice.*

*Replication. Filed Dec.* 7, 1872.

In Supreme Court, District [of] Columbia. In Equity.

DUTCH *et al.*
*vs.*
DODGE *et al.* } No. 8243.

Complainants hereby join issue with defendants, Dodge, Darneille, and Cissel.

H. T. WISWALL,
*Solicitor for Complanants.*

*Order of Reference to Examiner. Filed Dec.* 20, 1882.

In Supreme Court of the District of Columbia. In Equity.

ANTHONY M. DUTCH *et al.*
*vs.*
ROBERT P. DODGE *et al.* } No. 8243.

On motion of counsel it is this 20th day of December, 1882,
54 ordered that the above cause be referred to John Cruikshank, an examiner of this court, to take the testimony, and that the plaintiffs have twenty days for their direct testimony and five days for their rebutting, and that the defendants have twenty days to take their testimony.

A. B. HAGNER,
*Asso. Justice.*

*Motion for Order to File Def'ts' Testimony. Filed Apr.* 5, 1882.

In Supreme Court, District [of] Columbia. In Equity.

DUTCH *et al.*
*vs.*
DODGE *et al.* } No. 8243.

It appearing to the court that the above cause was calendered and the testimony completed March 1, 1883, for March term, 1883, and that on the 16th day of March some little additional testimony was — by defendants, it is, therefore, this — day of April, 1883, ordered that defendants file their testimony forthwith.

H. WISWALL,
*Solicitor for Pl'ffs.*

55 *Order to File Testimony of Def'ts Forthwith. Filed Apr.* 9, 1882.

In the Supreme Court of the District of Columbia. In Equity.

DUTCH *et al.*
*vs.*
DODGE *et al.* } No. 8243.

It appearing to the court that the testimony in the above-entitled cause has been taken and closed and the case duly calendered for

the March term, 1883, and that the testimony has not yet been filed on the part of the defendants, it is this 9th day of April, 1883, ordered that the defendants forthwith file their testimony.

By the court:

MACARTHUR, *Justice.*

Filed April 9, 1883.

56 In the Supreme Court of the District of Columbia. In Equity.

DUTCH *et al.* *vs.* DODGE *et al.* } No. 8243.

Interrogatories and cross-interrogatories propounded by counsel for complainants before John Cruikshank, examiner, to BRITTANIA W. KENNON, witness called by complainants:

Int. 1st. Were you ever the holder or owner of a note purporting to be signed with the mark of one Thomas Jenifer for the sum of $1,000, dated on or about July 8, 1875, payable to the order of one Jno. T. Hall in two years, with interest at 10 per cent. semi-annually? If yea, state fully and particularly when you became such holder or owner, from whom you received it, [and] what sum you paid for it.

Int. 2d. State fully how soon after July 8, 1875, the date of said note, you learned from Dodge and Darneille, or either of them, that your money was invested in said pretended note.

57 Obj'n. The word "pretended" objected to.

Int. 3d. State fully the several dates, near as you can, of any and all sums of money you have been paid as interest on said *pretended** note and the names of persons paying the same to you.

Obj'n to the use of the word "pretended."

Int. 4th. State if Thomas Jenifer ever paid you any portion of said note or any interest on said note.

Int. 5. Did Anthony M. Dutch, in Jenifer's lifetime, pay you any portion of said note or any interest on said *pretended** note?

Obj'n to the word "pretended."

Int. 6. Did Anthony M. Dutch, after Jenifer's death, on the 3d of March, 1878, pay you any portion of said *pretended** note or interest thereon?

Obj'n to the word "pretended."

58 Int. 7. Did you ever call on either Jenifer or Dutch and demand payment of said note and interest? If you did not so call, state fully and particularly your reason for not so doing.

Int. 8. Did not your counsel, Mr. Peters, advise you what course to pursue as regards any attempt to collect said *pretended** note?

Obj'n to the word "pretended."

[* The word *pretended* is erased in copy.]

Int. 9. Why did you allow said note and interest thereon to remain unpaid for a period of 6 years and make no attempt to collect the same?

Int. 10. Did you order and request said Dodge or Darneille, or either of them, to advertise for sale and to sell the premises mentioned in complainants' bill in the month of July, 1881, and also in the month of May, 1882?

Int. 11. What amount of money has been paid you as the proceeds of said last sale? State fully who paid you and date of payment.

Objected to, as the trustees' account is the best evidence as to this.

59 Int. 12. Did you ever have in your possession and control said *pretended** note and the *pretended** deed of trust to secure the same purporting to be executed by Jenifer before one Nich. Callan, notary?

The word "pretended" in this question objected to.

Int. 13. Did you direct Dodge and Darneille, trustees in said pretended trust deed, or either of them, to execute the release which Dodge executed Sept. 9, 1880, of the property mentioned in complainants' bill, or did you assent to the same after it was executed? If yea, state your reasons for so doing.

Int. 14. Was you consulted in regard to the release before it was executed?

H. T. WISWALL,
*Solicitor for Complainant-.*

60 Cross-interrogatories to be propounded to Mrs. BRITTANIA W. KENNON:

X Int. 1st. Have you any knowledge of the matters concerning which you have been interrogated except such as was derived from statements of your agents and attorneys?

X Int. 2d. Was or — not Rob't P. Dodge your agent in 1875 for the investment of your moneys, or some of them?

X Int. 3d. Have you not entrusted or left the entire management and control of the matters pertaining to the Jenifer note and deed of trust to your agent or attorney? If yea, has their action been satisfactory to you, and do you approve and ratify the same?

61 To the 1st int. she says:

A. I was the holder of it. I set the money, $1,000, by check, I think, through Dr. Peter to Dodge & Darneille, and received the envelope containing the papers from Dr. Peter and laid them aside without, at that time and some time after, looking at them.

To the 2d interrogatory she says:

A. As I said before, I gave the money to Dr. Peter for Dodge and Darneille to invest and received the envelope containing the papers.

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[* The word *pretended* is erased in copy.]

To the 3d int. she says:

A. I have received no interest on the note whatever, and on making inquiry at the end of the times when the installments of interest became due, or rather expressing my surprise that interest was not paid, I was informed—by whom I do not recollect—that the man was not now able to pay, but that I would be paid in full if I waited until the end of the two years.

To the 4th int.:

A. No.

62 To the 5th int.:

A. No.

To the 6th int.:

A. No.

To the 7th int.:

A. No.

To the 8th int.:

A. On the recommendation of Mr. George Peter I signed the release, but learning afterwards from Mr. Darneille, one of the trustees, that he had peremptorily refused to sign it, and that the money was justly mine, I wrote to Mr. George Peter at Rockville, informing him of what Mr. Darneille said, and leaving the whole matter in Mr. Peter's hands, since which time I have had nothing to do with it.

To the 9th int.:

A. I left it in the hands of Mr. Peter. I cannot answer as to the reason of the delay.

To the 10th int.:

A. I did not, because it was in Mr. Peter's hands, and he was empowered to act for me as my attorney.

63 To the 11th Int.:

A. Mr. Peter handed me $200. That is all I have ever received from the note.

To the 12th Int.:

A. I suppose the deed of trust was with the other papers which I sent to Mr. Peter, since when I have not seen the papers.

To the 13th Int.:

A. I have explained that in my answer to the 8th interrogatory. I had no communication with Mr. Dodge on the subject.

To the 14th Int.:

A. I have said that I signed it on the recommendation of Mr. Peter. That is all I know about the release.

To the 1st cross-int.:

A. I have no other knowledge.

To the 2d X Int.:

A. I gave the money to Dr. Peter, my son-in-law, and he gave it to Dodge & Darneille to invest. He gave them the money when the note was produced by them. I sent a check for the money. I think that was the only amount I invested with that firm.

To the 3d X Int.:

A. Yes, because I took it for granted that Mr. Peter would do what was right.

B. W. KENNON.

64 *Depositions for Plaintiffs. Filed April* 9, 1883.

In the Supreme Court of the District of Columbia.

DUTCH *et al.* vs. DODGE *et al.* } No. 8243. Eq. Doc. 22.

At an examination held in this cause before me, an examiner in chancery, pursuant to order of the court, personally appeared Washington Danenhower, Anthony M. Dutch, Benjamin M. Beall, Mary A. Dutch, Henry T. Wiswall, and John H. Steward, the witnesses within named, on behalf of the plaintiffs, and, after the witnesses had been sworn to speak the truth, the whole truth, and nothing but the truth touching the matters in issue, the within depositions were written down by me, from the statements of the witnesses, read to them and signed by them in my presence.

Mr. Wiswall appeared for pl'ffs; Messrs. Jones and Lambert, for def'ts.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

65 In the Supreme Court of the District of Columbia.

DUTCH *et al.* vs. DODGE *et al.* } No. 8243. Eq. Doc. 22.

DECEMBER 26, 1882.

Met pursuant to order of the court.

Present: Lambert and Jones, solicitors for Cissell & Darneille, and Mr. Wiswall, for plaintiff, whereupon—

WASHINGTON DANENHOWER, of lawful age, a resident of Georgetown, D. C., a witness produced and sworn on behalf of the plaintiffs, deposes & says:

Ques. 1. Do you know Anthony M. Dutch, plaintiff in this case; if so, how long?

A. Yes; the date I don't recollect; since July, 1880.

Q. 2. Did Mr. Dutch call on you about that time for a loan of money on lot H, square 367, mentioned in the bill of complaint?

(Question objected to as leading.)

A. He did call upon — for a loan upon the property named.

66 Q. 3. If you did anything in pursuance of that request, state what you did.

A. I directed him to procure an abstract from Johnson & Beale, who were in business together at that time, and after producing the same we found there was a trust upon the property made in 1875 to

secure $1,000 to J. T. Hall. The trustees under that trust given by Thomas Jenifer, who owned the property in 1875, were Robert P. Dodge and Philip A. Darneille. I went with Mr. Dutch and procured the abstract, and Mr. Dutch paid for it. When I discovered there was a trust upon the property I asked Mr. Dutch to explain it to me as best he could. He immediately remarked that there was no trust.

(Statements of Dutch objected to.)

Q. 4. Look at this abstract produced here, and say if it is the one that you procured for Mr. Dutch and that you now speak of?

A. Yes, sir; this is the identical one.

(Abstract offered in evidence and marked Exhibit W. D., No. 1.)

Q. 5. If you directed Mr. Dutch, in consequence of finding
67 this encumbrance you have spoken of, to do anything, state what you directed him to do.

(Objected to as immaterial and leading.)

A. I did.

Q. 6. Did you, soon after you procured the abstract, call on the defendant, Mr. Darneille, in reference to it?

(Objected to as leading in form.)

A. I did call on Mr. Darneille and Mr. Dodge also. I saw Mr. Darneille first at his office, and told him about my business, which was to procure a release of this trust, as I had been informed it was a forgery—a fraud rather. Mr. Darneille said he believed it was a forgery and fraud; that he had his attention called to the matter once before; that they had tried to collect the money and couldn't, but he said, "We can release this property, under the circumstances, if we are paid for it." He also said, "You see Mr. Dodge and hear what he has to say." He also said, "How much can I be able to make out of it?" I said, "Only what a trustee usually gets, $5," or "half of $5;" I don't recollect now. He then said, "You see Dodge and get his signature to the release," or words to that effect;
68 that is *the* all the conversation at that time. I saw Mr. Dodge immediately and had a talk with him, and he informed me that he believed the deed of trust above mentioned to be a fraud; that they had once before tried to collect the same and failed in a previous lawsuit. After our conversation about the matter he said he would release it if Darneille would, and I then prepared a release with my own hand, which I now show to the examiner. (Release offered in evidence and marked W. D. No. 2), which he (Dodge) signed and acknowledged in my presence as a notary public, remarking when he signed that the whole transaction was a fraud—the whole transaction in connection with the deed of trust above mentioned. This conversation with Mr. Dodge was at his office, at the assessor's office, September 9, 1880, within a day or two of the interview with Mr. Darneille; that was all the conversation I had with Mr. Dodge at that time. About the same day or the next day

I returned to Mr. Darneille's office and told him of my transaction with Mr. Dodge—that he had signed the release. He remarked,
69 "What am I to make out of this thing—got to make something out of it." I said, "You will probably make $2.50." He demurred and said that was not enough. I said, "How much do you want?" He said, "I ought to make four hundred dollars out of it, and will give you one-half." I said, "No; I won't have anything to do with it; there is no justice (or words to that effect); you shouldn't have it." "I will," he said; "I have taken a risk releasing this, and the note is held by a friend of mine who lives in Georgetown—a lady—and I don't intend to release it without I'm paid for it." He had remarked that he knew it was a fraudulent transaction about the deed of trust, and seemed to be informed of the status of it.

(Ojected to as witness' opinion.)

I think that was the substance of the conversation. The transaction really was ended there with Mr. Darneille, and also with Mr. Dodge, until the day of the sale.

Q. 7. Look at this paper (Exhibit W. D. No. 2) and say in whose handwriting on line——

A. It is all my handwriting.

70 It would be well to state, in connection with my testimony here, that I had occasion to investigate the character of Thomas Jenifer, deceased.

(Objected to and withdrawn.)

During the summer of 1880, or fall of 1880, I met Mr. Dodge, and in the spring of 1881, and had several conversations with him about the property, and he asked me how I had fixed the matter up. I informed [him] that there was a hitch in the matter with Mr. Darneille. About the time of the first sale to Mr. Stewart I informed Mr. Dodge of all the facts in connection with my conversation with Mr. Darneille, and told him that if the sale took place I would have to protest in public against it. At the time of the sale, in the afternoon, I was present, and saw Messrs. Dodge and Darneille, and when the auctioneer finished the reading of the notice of sale to the public he allowed me to make a statement, which I did, protesting against the sale; that it was a fraudulent transaction, and that the trustees had acknowledged it to me to be such. I, at that time, was the agent of the owners of the property. I also
71 mentioned in substance what I have mentioned to you right here, in relation to one of the trustees requiring money for his signature. The sale was made, and the purchaser at that time declined to comply with the terms, after investigation into the facts connected with the deed of trust. That is about all I know.

Cross-examined by Mr. JONES:

X Q. 1. You don't pretend to give all the conversation that you had with Mr. Darneille at either of your interviews, do you?

A. I don't want to be positive, but if he can refresh my memory I will be glad to know it.

X Q. 2. The conversations lasted several minutes, and what you have given of them would not have occupied thirty seconds. I want to know whether you pretend that in your testimony you have given the entire conversation between you.

A. I think I have, in substance. It may not be word for word.

X Q. 3. Who first used the word "forgery" in connection
72 with the deed of trust—you or Darneille?

A. I couldn't say positively about that. It was in my mind that it was a forgery because I was informed.

X Q. 4. Was Dutch, the complainant in this suit, with you on either occasion with Darneille?

A. He was once.

X Q. 5. Did Dutch say to Darneille in your presence that Jenifer, in his lifetime, had told him that he had paid off the $1,000 note secured by this deed of trust?

A. No, sir; he said this: He said all his debts he had paid off, but did not mention the $1,000 note. When I first informed Dutch about the $1,000 note he had never heard of it before.

(Objected to as not responsive.)

X Q. 6. Did not Mr. Darneille, on the occasion referred to, ask Dutch if he was willing to make oath, to raise his right hand and swear, that Jenifer had told him that he had paid this note, or words to that effect?

A. That is rather complicated. I don't recollect any such
73 question in reference to the $1,000 note. He, Dutch, said Jenifer had paid all the debts, and I believed Jenifer's reputation was good.

X Q. 7. Did not Dutch on this occasion raise his right hand and make oath, at Darneille's request, that Jenifer had told him that he had paid this note, or words to that effect?

A. I don't recollect any such act of Dutch's.

X Q. 8. Did you not have another interview with Mr. Darneille, in which he reminded you that Dutch had said that Jenifer told him that he had paid this note off, and you told Darneille that you had instructed Dutch to say that, or put those words in Dutch's mouth?

A. I had another interview with Mr. Darneille, and he mentioned the subject of your question, and I denied that Dutch knew of the $1,000 note, and I did not put the words into Dutch's mouth. I then remarked to Mr. Darneille that he had inferred from our conversation that Dutch knew about the $1,000 note; that it was a mere inference from what Dutch had said about Jenifer's remark about paying all his debts.

74 X Q. 9. Did you know anything about the state of the title until you obtained this abstract (W. D. No. 1)?

A. No, sir; I never knew anything about it; never saw Mr. Dutch until he came to my office to get the loan.

X Q. 10. Who first told you the deed of trust was a forgery?

A. Well, I don't recollect about that.

X Q. 11. When you first saw Mr. Darneille did you not ask him to release the property because the note had been paid off, but had been lost or mislaid so that it could not be found?

A. I will have to mention, in connection with that question, this fact: Seeing the abstract I supposed it was a genuine, straight transaction, and I talked to Mr. Dutch about it. He answered that he didn't know anything about it. I informed him the date of the trust was in 1875. He said he did not see why Jenifer should make a loan on the property, or in any other manner, as there was no necessity for the money, and in that interview Dutch may have mentioned that it was a forgery, either a forgery or it may have
75 been done without Dutch's knowledge. I told him he had better look among Jenifer's effects and see if he could find that note. He did not find the note. I remarked to Mr. Darneille that if there had been such a note given by Thomas Jenifer as described in this deed of trust, and had been paid, that it was lost—we could not find it—and that if it had been given I was satisfied that it was paid.

X Q. 9. When you saw Mr. Darneille at your first interview was the release prepared?

A. No.

X Q. 10. Was it prepared when you had your second interview?

A. I think it was.

X Q. 11. Was it at the first or second interview that you told Darneille that it was a forgery?

A. I don't recollect of informing him about any forgery.

X Q. 12. Then you never told Mr. Darneille that it was a forgery?

A. I did tell him it was a forgery afterwards, but don't know whether it was at the first or second interview?

(X Q. 11 repeated.)

76 A. In connection with that I wish to state that my information all -round—Darneille and Dodge—was that it was a forgery, but the person from whom I learned that first I cannot now say. I mean that both Darneille and Dodge talked about it freely. I knew it at the first interview, but who told me I cannot name.

X Q. 13. What was the first thing you said to Mr. Darneille at your first interview? Give the exact language.

A. The exact language I cannot recollect, but I know I approached him as I would do any one else to get the facts in relation to a deed of trust. This was in Mr. Darneille's office, on 15th street; cannot recollect the exact date; about the 16th July, 1880—after that date; cannot state how long; a few days after, I think.

X Q. 14. What did you go to him for?

A. I went to him to get a release of this deed of trust.

X Q. 15. What did you say to him first?

A. I don't recollect what I said to him first.

X Q. 16. What did he say first?

77 A. The exact words he used I don't recollect, but I know in substance that he knew all about the circumstances.

X Q. 17. What did you say next?

A. I cannot give you the exact words.

X Q. 18. What did he say next—the exact words?

A. I cannot give you the exact words, but I can tell you about the words, in substance.

X Q. 19. How long did the interview last?

A. It wasn't very long—a few minutes; I cannot say how many. It was not an hour; don't think it was half an hour; don't think it was ten minutes.

X Q. 20. How long after that was it that you saw Mr. Dodge?

A. The same day or the next day; very soon.

X Q. 21. You took the deed of release with you (W. D. No. 2) when you went to see Mr. Dodge?

A. No, sir.

X Q. 22. Did you have two interviews, then, with Dodge?

A. Yes, sir; I think I had.

X Q. 23. How long a time elapsed between your first and second interviews with Dodge?

78 A. I saw Mr. Dodge almost every day on business, but on this business I don't know how long it was.

X. Q. 24. Was it a week?

A. I cannot state, positively.

X Q. 25. Was it a month?

A. Cannot state definitely.

X Q. 26. Was it two months?

A. Cannot say whether it was one or two months. I go to the assessor's office every day on business.

X Q. 27. But the business of this deed of trust you cannot answer whether it was a week, one month, or two months between your first and second interviews with Dodge?

A. I would not like to state positively, as I have business with the assessor and collector of taxes nearly every day. I may have mentioned it at some of my visits there.

X Q. 28. Who employed you to obtain the release of this deed of trust?

A. Mr. Darneille said to me: "I will sign a release if Mr. Dodge will do it."

(Objected to as not responsive.)

Question repeated.

79 A. Mr. Dutch employed me to make the loan, and in connection with that it was necessary to have a release, and to facilitate that I drew the release myself.

X Q. 29. When?

A. He employed me to get the loan in July, 1880.

X Q. 30. Was Dutch frequently at your office in connection with the loan?

A. He called to see me as any other individual would while the loan was in progress.

X Q. 31. Would not he call nearly every day?

A. I don't think he did.

X Q. 32. What did Dutch promise to pay you for obtaining this deed of release?

A. He never agreed to pay me anything.

X Q. 33. What were you to get for obtaining the loan?

A. Two per cent.—$10 for a $500 loan.

X Q. 34. Did you not tell Darneille that you expected to make $400 out of the transaction?

A. No. We don't do business in that way.

X Q. 35. Had you not received $40 from Dutch or the owners when you saw Mr. Darneille at one time, and did you not tell Mr. Darneille that you had received $40 from them?

A. You speak of the amount of $40. In connection with
80 that question I wish to state that the abstract which had been ordered from Johnson & Beale was ordered on my endorsement, and for which I was responsible and had to pay $25. I took a receipt for it. The remainder, I think, was $10 fee and $5.00 for drawing the papers. That was the way it was if I mentioned it at all. That was the way that I think it was paid, but I could not tell without reference to my books.

X Q. 36. Did Mr. Dodge tell you afterwards that he did have an impression that there was some fraud in connection with this deed of trust, but that he had afterwards become convinced that it was a genuine transaction and that he wished to recall the deed of release which he had signed erroneously and without authority?

A. Mr. Dodge, at the time and for some time afterwards, stated to me that he believed it to be a fraudulent transaction. Some time afterwards—it may have been some months or a year, time passes so quickly—he remarked to me that he was in doubt regarding it,
but at no time did he ever say to me that he desired to
81 recall his signature to the deed of release.

X Q. 37. Where is the deed of trust in question?

A. I don't know; I have never seen it.

X Q. 38. From what data did you prepare that deed of release?

A. I prepared that release from the abstract for the liber and folio, I think, and *for* the description of the same.

X Q. 39. Of whom did you inquire, in relation to the standing of Thomas Jenifer, before you saw Messrs Dodge & Darneille?

A. I saw Mr. Thomas L. Hume, now deceased. I don't recollect anybody else.

By Mr. LAMBERT:

X Q. 40. How long have you known Mr. Darneille?

A. I think for about two years and a half; not more; probably—well about three years.

X Q. 41. How long had you known him before your first conversation with him in his office on 15th street in reference to this deed of trust?

A. Well, I have known the gentleman, by reputation, for three years. I doubt whether I had a transaction with him before this; and I think I had no personal acquaintance before the trans-
82 action, or prior to the first conversation on 15th street.

X Q. 42. You then introduced yourself to Mr. Darneille at that interview?

A. I guess I did.

X Q. 43. Who were present, besides yourselves, at that interview, which, I understand, took place in Mr. Darneille's office, on 15th street?

A. There was somebody, I think, either at the first or second interview, while I was there, but his name I cannot recollect.

X Q. 44. Was it any one of your acquaintance?

A. I would not like to say positively.

X Q. 45. Did you have at that time with you, and did you exhibit to Mr. Darneille, the abstract which you have placed in evidence?

A. I do not recollect.

X Q. 46. Now, won't you be good enough to state just how you introduced the subject of the release or deed of trust, or both?

A. I cannot state how; that is something that one cannot recollect—the exact language.

X Q. 47. Won't you be good enough to state what occasioned Mr. Darneille's disclosing to you, until then a stranger to him, his connection with a fraudulent deed of trust, or the fact that the
83 deed was fraudulent, and what language he used in making that disclosure?

A. That occasion of course rested with himself; I don't know what the occasion was, except to make some money; that is a matter for himself, but the language he used—the exact words he used—I cannot give other than this: [He said that he would release the property if I got Mr. Dodge's signature; I procured Mr. Dodge's signature in the regular way, and presented it to Mr. Darneille, and he then said: "What have I to make out of this?" or words to that effect. I then said to him: "You have agreed to release it." "Well," he said, "I won't release it unless I am paid for it." He also said: "You are a notary public; you can draw up a trust for $400, get Dutch to sign it, as he cannot read; I can sell the note; I can work the note off." I declined and said I would have nothing to do with it. He even offered me $200, one-half of the $400. I told Mr. Dutch when I next saw him about my conversation with Darneille. That is about the substance.]

Objected to as not responsive.

84 X Q. 48. Is that the best answer you can make to the question?

A. I think that is the best answer I can make.

Adjourned to Wednesday, the 27th day of December, 1882, at 11 o'clock.

J. C.

WEDNESDAY, *December* 27, 1882.

Met pursuant to adjournment, whereupon the cross-examination of WASHINGTON DANENHOWER was continued as follows:

X Q. 49. State your occupation.

A. I am in the real estate business.

X Q. 50. What business is Mr. Darneille in?

A. I am sure I don't know what his business is.

X Q. 51. Didn't you know when you first called on him what business he was in and what he had an office for?

A. He appeared to be in the broker business, and I think he had signs out for real estate and loans. We cannot always give a man's business accurately, but I think that answer will cover the question.

X Q. 52. Separate, if possible, the two interviews, and tell
85 me if, at the first interview you had with Mr. Darneille, he did not say to you that he knew nothing about this transaction, that he was away at Bedford Springs, Pa., when it occured, and that his partner, Mr. Dodge, knew about it and had made the transaction.

A. I cannot separate the two interviews in regard to time. In regard to this question as to being away at Bedford Springs, I have no recollection of such remark, and as regards his remark of Mr. Dodge's attention to the business, I have no recollection of that either.

X Q. 53. At this first interview did he not say that he personally knew nothing of the transaction, but would look it up if you wished him to and would give him a mem. of the matter, and didn't you then give him a memorandum of it—look at that before you answer (showing a paper marked W. D. No. 3)—as follows:

Ex. W. D. No. 3.

Thos. Jenefer, employed by Hall & Hume, gave his note to J. T. Hall for $1,000, secured by deed of trust, dated July 8, 1875, & appointed R. P. Dodge and P. A. Darneille trustees.

86 A. I don't remember about any such remark of his about looking it up. I must say this exhibit—a paper which you hand to me—I know to be genuine, and which I presume I gave him for his information. I think I had the memorandum exhibited as evidence just as a memorandum of my own. That is my impression, as that is the way I usually do business when I approach gentlemen in transactions of this kind. I think I had it in my book.

X Q. 54. Then you do not recollect that you left this memorandum with him so that he might inquire into the subject at your first interview with him?

A. I don't recollect leaving that memorandum with him for that purpose.

X Q. 55. Do you know for what purpose you left it with him?

A. No; I don't know for what purpose, or how he got it. I had forgotten that I left a memorandum with him until it was produced here. It is in my handwriting.

X Q. 56. Was it not at the second interview with Mr. Darneille that he first told you that he had learned that a lady in Georgetown was the holder of the note?

87 A. I don't recollect about its being the second interview; don't recollect positively.

X Q. 57. Your memory is somewhat treacherous, is it not? You didn't know that you had left that memorandum; you cannot sep-

arate those two interviews. Don't you now think that other matters may have crowded your memory so as to render it indistinct as to these matters?

A. I recollect the principal facts in the case, but the minor details are something that I have not paid much attention to.

X Q. 58. And the different interviews that you had with Darneille and Dodge and Dutch are so blended in your recollection that, while you remember the principal facts, as you say, you cannot give the details of the several interviews?

A. I cannot give the details of the several interviews. The principal facts were very plain and I cannot forget them. The whole transaction appeared to be a doubtful one, and I didn't endeavor to recollect the minor details, perhaps, as much as I ought to have done had I expected to testify at a future day.

(Last portion objected to as irresponsive.)

88 Redirect:

R. D. 1. Has your attention to what transpired at any of the interviews with Mr. Darneille at his office, which you have spoken of, ever been since called to the same until you testified here, by any one?

A. Yes, sir.

R. D. 2. Has your attention been called to it by any lawyer; and, if so, by whom?

A. Yes, sir; it has, by a gentleman from Georgetown, Mr. C. M. Matthews.

R. D. 3. When was your attention called to it by Mr. Matthews?

A. It was called to it before this suit commenced, in the spring of 1881.

R. D. 4. At any of the interviews with Messrs. Dodge and Darneille, or either of them, did either of them mention the names of any persons connected with this fraudulent deed of trust that you speak of?

(Question objected to on account of its form.)

A. Mr. Dodge, I recollect, mentioned the names of John R. Brooks and Charles Stewart, two colored men, and he said, I believe, that they were both in the penitentiary, and he said he believed it was a fraudulent transaction.

89 R. D. 5. Did Mr. Dodge or Mr. Darneille mention the names of any white men in this connection?

A. I cannot recollect the name of any white man.

R. D. 6. Did Mr. Darneille, at any of the interviews you had with him, assign any reason for refusing to join Mr. Dodge in signing the deed of release other than the non-payment of the $200 to him you have spoken of?

(Objected to on account of its form.)

A. No, sir; he did not.

Recross-examined:

X X 1. Did he not, with another gentleman, come to your office and say that he had learned that the note was outstanding and had never been paid, notwithstanding Dutch's assertion that it had been, and that he would never sign the release, and withdrew all his former propositions in respect to the matter?

A. He did come to my office with another gentleman. I think it was Mr. Havenner—Charlie Havenner—but the substance of that interview I cannot give. I won't be positive. He may have said what you ask, but I am not positive what it was.

90 X X 2. Yet all that was said at that interview related to that transaction, did it not?

A. I don't recollect what he said on any subject relating to this or any other transaction. I recollect the interview; can't be positive.

WASH'N DANENHOWER.

Sworn to and subscribed to before me this 27th day of December, 1882.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

91 ANTHONY M. DUTCH, one of the plaintiffs, a resident of Washington, D. C., being sworn, deposes and says:

Ques. 1. State what relation was the late Thomas Jenifer to you.

A. Cousin—first cousin.

Q. 2. How long did you know Thomas Jenifer before his death?

A. From the time I was a small little shaver, four or five years old.

Q. 3. Are you familiar with the property he owned on O street? If so, mention the number of the lot and square and between what other streets it is.

A. I am acquainted with it, sir; it is between 9th and 10th streets; I don't know exactly the number of lot and square.

Q. 4. What, if any, buildings are on this lot?

A. They are frames—a little shoe shop and a house on the front—front on O street. There is another two-story house near the other end, back towards the alley, and a small shanty.

Q. 5. State whether or not you have had the collecting of the rents of those houses, and, if so, for how many years.

92 A. While it was in my hands I was collecting three or four months at a time in a year. I have been collecting it since the death of the old man and a little before that.

Q. 6. Who paid the taxes on that property?

A. I paid taxes since his death until the first sale.

Q. 7. Did you pay the tax for 1874? Look at that. (Showing paper.)

A. Yes, sir.

(Paper offered in evidence and marked A. M. D. No. 1.)

Q. Where did you get the money to pay it with?

A. From this house's rents.

Q. 9. (Showing tax-bill marked A. M. D. No. 2.) Look at that paper and say what it is and whether you paid it or not.

A. It is a tax-bill for 1876. I paid it.

(Bill offered in evidence.)

Q. 10. (Showing papers.) What are these?

A. These are tax-bills—one for first half of 1877, another for first half of 1878, and the other two for 1st and 2d halves of 1880. I paid them all from the rents.

(Papers offered in evidence and marked Exhibits A. M. D. Nos. 3, 4, 5, 6.)

Q. 11. Have you made careful search among all your papers
93 for the tax-bill for the year 1875; and, if so, have you or not been able to find it?

A. I have made search and have not found it. I looked over all the papers.

Q. 12. Were you present at the sale of this property at public auction in May—July—last?

A. Yes, sir; I was.

Q. 13. Did any person at the time of the sale give notice as to the character of this deed of trust?

(Objected to as leading.)

A. Yes, sir; he did.

Q. 14. Were you present at the sale last year of this property?

A. Yes, sir; I was there.

Q. 15. Do you recollect going to Mr. Danenhower's office to procure a loan of money on this property? If so, state, as near as you can, how long this was before the first sale.

A. I recollect very well; it was some time before the sale; it was twelve months. I can't think of the month right away; it was in the spring; I don't know whether it was June or July.

Q. 16. Whom did you see and talk with there about a loan?

(All conversations between witness and Danenhower objected to as inadmissible.)

A. Mr. Danenhower, the young man.

94 Q. 17. What did you tell him you wanted?

(Same objection.)

A. I told him I had a place in my view that I would be very happy to get some money on.

Q. 18. What did Mr. Danenhower do for you?

(Same objection.)

A. He got an abstract of the title.

Q. 19. When he delivered you the abstract did he tell you that he found a record of a deed of trust on this property?

(Objected to as leading and inadmissible.)

(Question modified:)

When did you first learn that there was $1,000 against the property?

A. After Mr. Danenhower had been down and seen—not before.

Q. 20. Did you go anywhere from Danenhower's office in consequence of your learning, as you say, for the first time, that there was this $1,000 against the Jenifer property? If so, state to whose office you went.

A. No one's at all—except a place on the Island where they keep—I forget the name of the garden, the building there. I went to look for a man named Hall. The next place was in the Treasury,
95 looking for Mr. Hall. I found a Mr. Hall, but he was not the one. I found four persons named Hall, but they were not the right ones. I then went back to Danenhower's. I did not go anywhere else from there. I had to give it up. I did not go to any other office that day or any other day for two or three days.

Q. 21. Did you ever call at the office of Mr. Darneille and have an interview with him in reference to this $1,000 note on the Jenifer property?

A. I had, sir.

Q. 22. About what time did you get there, and was Mr. Darneille in when you arrived?

A. No, sir; not the first time; I got there between 10 and 11 in the morning; I had been there several times before that.

Q. 23. State all the conversation that you recollect took place between you and Mr. Darneille on the subject of this $1,000 note against the Jenifer property?

A. Well, I saw him; I asked him if he was Mr. Darneille, and he said "Yes." I told him I understood he had some kind of claim against it. I didn't exactly know what. Mr. Darneille said:
96 "Ah, where's it at?" When I commenced to explain it to him I told him it was between 9th and 10th on O. He said he did not know so much about it. There was not much else said, except that he asked me where was Mr. Danenhower, and then he said to me: "Go and tell Mr. Danenhower to come up here and see me." So immediately then I started off and went to Mr. Danenhower's. That is all I remember, except that I told Mr. Danenhower he had better hurry up or he would not catch the gentleman in.

Q. 24. Do you remember what Mr. Darneille said to you just as you were about leaving his office?

(Form of question objected to as leading and suggestive.)

A. He said to me: (I was telling him about the old man making a will.) He said that I could bring the papers to him, and I didn't make much of an answer to that at all; and it runs in my mind like he said to me that I could fix it all right, and "What are you going to give me?" he said. He hooted at me, and said "Shoo." That was all he said; then he left.

97 Q. 25. When Mr. Darneille asked you what you were going to give him, what reply did you make, if any?

A. Well, I told him I would give him whatever the costs were by the court.

Q. 26. What did Mr. Darneille say in reply to that?

A. Shoo-sh. Then I left.

Q. 27. State where you went from Mr. Darneille's office.

A. Down to Mr. Danenhower's.

Q. 28. Did you see Mr. Danenhower in his office.

A. Yes, sir; I did.

Q. 29. Did you have any conversation with him about what you said took place in Mr. Darneille's office?

(Objected to as leading and inadmissible.)

A. Not that time.

Q. 30. Did you at any subsequent time?

A. Yes, sir.

Q. 31. Did Mr. Danenhower leave his office after you had that conversation with him?

(Objected to as irrelevant & immaterial.)

A. Yes, sir; I expect he did; I didn't stop—I didn't go in; I was in a hurry for him to see that gentleman.

98 (Counsel for plaintiff files exemplified copies of will of Thomas Jenifer and letters of administration *c. t. a.* to Anthony M. Dutch, which are marked A. M. D. No. 7.)

Q. 32. Where was Mr. Thomas Jenifer living in January, February, and March, 1875?

A. He was living back in that little two-story frame on the alley running south from O street.

Q. 33. State what was the condition of his health during those months.

A. His health was pretty bad, sir.

Q. 34. What ailed him?

A. He had—I don't know what you call it—a wolf leg; all swelled up on one side; could hardly walk.

Q. 35. Was he confined to his bed during any of those months, January, February, and March, 1875?

A. Yes, sir; he was.

Q. 36. Who had the sole care of him at that time?

(Objected to as leading.)

[A.] I don't quite understand that.

(Examiner explains.)

A. A couple of women. He fell out of the house and they got him in.

99 Q. 37. Did he leave that house or was he taken from it and carried to another house about that time? If so, state as near as you can the month, how he was taken, who took him, and where he was taken to.

A. He was taken from that house to my house on Sampson street,

between 14th and 15th, 1426. I- was March or April, one of the two. I think March was the right one. He was taken away in a market wagon—Mr. Green's, who keeps the grocery store on 14th and Sampson streets.

Q. 38. Who took him from the house to the market wagon and put him in?

A. Hez. Prater, who drove Mr. Green's wagon, and me and my wife.

Q. 39. As he rode up to your house was he sitting up or did he lie down, and, if so, on what?

A. He was laying down on blankets.

Q. 40. Did he remain at your house from that time to the date of his death?

A. He did.

Q. 41. What was his condition as to his being able to sit up, or being confined to his bed, from the time he came to your
100 house until his death? State generally what his condition was.

A. His condition was pretty bad, sir, at first; in a couple of weeks he had a doctor to attend him; I helped the doctor to use a concern to get the use of his leg back; he always stayed in his bed from the time he came to my house until his death, except when we sometimes moved him to sit in his chair.

Q. 42. Was he ever able, without help, to get out of bed any of the time he was at your house?

(Objected to as strongly leading.)

A. He was disabled to get out of bed; I made a tall cricket and fixed something in the bottom of it, so that when there wasn't anybody — he could slip out and slip in.

Q. 43. Who had the sole care of him while he was at your house?

A. My wife and myself and another girl we had there; he couldn't do anything himself except to eat and sleep.

Q. 44. Do you recollect of any one calling at your house along in the fall of the year, after Jenifer came to your house, and asking Jenifer anything in reference to there being any note against
101 this property? If so, state all that was said by the party calling and by Jenifer.

(Objected to as leading.)

A. Yes, sir; I do; he came in to know if there was "an old man about here by the name of Thomas Jenifer." I didn't know but they might be doctors—two of them—and also a little time after they got seats they sat down and looked at each other, and didn't say anything for some time. After a while they said to him had he drawed any money on his property, and he huffed them off—didn't know what they was talking about. He spoke to them in such a way that they didn't care to hear it, and then they got up, and one of them asked him a question—was there $1,000 drawed against his place, and he told them "no," he hadn't drawed no money, and he said I

knew he hadn't drawed any. Then they went on to ask him (there were three names they called to him) did he know them? He told them he did not. One of them was named Brooks, and the other called Stewart. I knew him—the other one—I never co-ld think of his name. It was a name I never heard before, and I have forgotten it.

102 Q. 45. Did you ever hear one word said about this $1,000 note and this deed of trust from that time until you were told of it in Danenhower's office?

(Objected to as leading.)

A. No, sir; I did not hear it.

Examination adjourned to Thursday, the 28th December, 1882, at 7 p. m.

J. C.

DECEMBER 28, 1882—7 p. m.

Met persuant to adjournment.

Present: Counsel for Darneille, Cissell, and plaintiffs. Whereupon the examination-in-chief of the plaintiff was continued as follows:

Q. 46. If you have any reason why you are able to say that you moved Jenifer from his house to your house in 1875, as you say, in March or April, you may state what that reason is.

A. Well, why it was the case is, he gave me the permit of taking all his change and paying his taxes and all the small debts that was to be paid; also I done all that he asked me to do like he would do himself. He was not able to do it, and I done it for him

103 up until the death of him.

Q. 47. State the amount of rents of the several houses and shops on this lot of Jenifer's.

A. One house was $10 a month by the year; that was the house on O street. The shop on O street was $3.50 per month. The house on the alley was $7.50 a month; that was pretty much all except one little shanty.

Q. 48. Did Jenifer ever live in the house on O street; if so, when?

A. He did, sir; about 12 or 13 years ago.

Q. 49. Who first occupied the house on the alley from which you carried Jenifer to your house?

A. A man by the name of Joseph Clay.

Q. 50. Do you remember when and where he paid his first rent? If so, state.

A. Yes; he paid it at my house where I carried him—carried Mr. Jenifer. It was in July or June, one or the other of them. He paid $7.50 when he first took it. He only stayed a month, and I had to get him out.

Q. 51. Did he move into the house on the alley from which Jenifer moved out, within a week or two? State to the best of

104 your knowledge how many weeks it was after Jenifer moved out.

A. Yes; about a couple of days after Janifer moved.

Cross-examined by Mr. JONES:

I am somewhere about 50; I don't know exactly. My business is anything I can get to do; jobbing around; used to work at the hotels some, with Mr. Willard. I have been living on Sampson street some fifteen years. During the war I lived in an alley between 13th and 14th streets. I was born in Montgomery county, Md. When I first knew my cousin, Thomas Jenifer, he lived at—I disremember the name of the place now—Mr. What's His Name bought, and the folks moved out. The women are in Georgetown and I forget the name- now; I could find out, though. Afterwards he came down to O street and lived in some kind of shanty house there. I understood him to say he moved to the property in question shortly after his mother died—two or three years ago.

105 X Q. 1. Do you know when he bought this property on O street? Were you present?

A. I was not, sir; I heard of it pretty soon, but I don't know.

X Q. 2. Do you know who built the shanties on the lot?

A. No, sir; I couldn't tell you; I built one of them—the house where he stayed into. I built that myself.

X Q. 3. Whom did you build it for and how much did it cost?

A. $600 was all I charged him. I built it for Jenifer.

X Q. 4. The house you built was the two-story house back on the row, wasn't it?

A. That's it, sir.

X Q. 5. How do you know that you paid the taxes for 1874?

A. Well, because he put me head of all his business.

X Q. 6. When did he do that?

A. In July—the twenty something or other; I disremember now; in the 95 or something. It ain't that—no, it is the year 1825 or 95—one or the other; I don't remember now.

X Q. 7. And that is the reason you know you paid the taxes for 1874?

106 A. Yes, sir.

X Q. 8. How do you know you paid the taxes for the year 1875?

A. I could never find the bill, and the expression was made to me that it was paid.

X Q. 9. Why didn't you pay the bill for 1875, if you had charge of Jenifer's business?

A. They wouldn't take it, I suppose; they didn't want to be paid twice.

X Q. 10. From whom did you get the money to pay the bill for 1874, if you remember?

A. Out of Mr. Jenifer's money.

X Q. 11. Did he give it to you?

A. Yes, sir. He kept all he got underneath his head when I carried it to him.

X Q. 12. Where did you find these tax-bills that you have shown here?

A. I found them where I put them—in a trunk—my trunk.

X Q. 13. Did you keep all Jenifer's papers?

A. Yes, sir.

X Q. 14. When did you commence doing so?

A. I thought I had told you once. After I had taken him with me to my house, on Sampson street.

107 X Q. 15. Before that time you had nothing to do with his papers or business, had you?

A. No, sir; not so much.

X Q. 16. Do you recollect going with Mr. Danenhower to see Mr. Darneille about this deed of trust and note for $1,000; and, if so, when was it and where was it?

A. I don't recollect it, if I must tell you the truth.

X Q. 17. You heard Mr. Danenhower testify yesterday that you went with him to see Mr. Darneille. Didn't he tell the truth?

A. I wasn't with him.

X Q. 18. When did you ever see Mr. Darneille (here present) before? Were you ever at his office?

A. Well, it was very seldom. I don't recollect seeing him but twice. I was at his office; I can't exactly say the year or the time. I was there some four or five days waiting to see him, but could not see him. I saw him once at his office.

X Q. 19. Who was with you at that time?

A. There wasn't any one.

X Q. 20. Then you never were with Mr. Danenhower at Darneille's office?

A. No, sir; I was not. I told him so to-day, too.

108 X Q. 21. Are you the Anthony M. Dutch the complainant in this suit and the executor of the will of Thomas Jenifer?

A. I am.

X Q. 22. When you went to see Mr. Darneille was it not for the purpose of asking him for a release of this deed of trust?

A. It was, sir.

X Q 23. Did you tell him that the note had been paid by Jenifer before he died?

A. No, sir; I did not.

X Q. 24. What did you tell him about the note?

A. I told him I understood he had a note against it and I didn't know so much about it—he always told me he hadn't any—I mean Mr. Jenifer told me.

X Q. 25. What more did you say?

A. Well, I asked him could he do anything with it. He says, "Where is it at?" I told him precisely where it was at. Then he says to me (I told him he had made a will), "Bring your folks to me and your papers, and I'll see what I can do." He said, "What will you give me?" And I didn't stand many minutes after that was said. He hooted at me. I immediately started to come away, and he told me to tell Mr. Danenhower to come down, and

109 that was all said at that time.

X Q. 26. So that was all that was said, was it, between you and Mr. Darneille?

A. That's all, sir.

X Q. 27. Had you looked among Jenifer's papers to find this $1,000 note?

A. I looked, but I knew it wasn't worth while to look.

X Q. 28. Why did you know it was not worth while to look?

A. I had learned that there were several men down to the City Hall, and they had an idea of drawing money against this property. Word came to my house.

X Q. 29. Did you tell Mr. Darneille that Jenifer had paid this note, and that it was lost and you could not find it?

A. I did not, sir.

X Q. 30. Did you not at any time raise up your right hand and make oath that Jenifer had told you he had paid it?

A. I did not.

X Q. 31. What did you say to Mr. Darneille in order to induce him to release the deed of trust?

A. I said what I thought it was right for me to say. I didn't want him to do it if he didn't want to do it.

110 X Q. 32. Do you know what a deed of trust is?

A. I can't say that I do, sir.

X Q. 33. Do you know what a deed of release is?

A. No, sir.

X Q. 34. The will of Jenifer gives you $1,100, does it not?

A. Yes, sir.

X Q. 35. Have you received any of it?

A. I have not, sir.

X Q. 36. And you won't be able to get any of it, will you; unless you succeed in this suit?

A. Of course not.

X Q. 37. Do you know whether O street was paved with concrete about the year 1875, and a large special tax on this lot was imposed for that purpose?

A. I know some of it was.

X Q. 38. You know that you didn't pay any special tax on this lot, don't you?

A. I know that I paid some on it. I don't know whether you call it special or not.

X Q. 39. All the taxes that you paid on this lot you have presented the bills for and filed them, have you not?

A. Yes, sir; I don't know exactly that they are all. I think I have some more with Jenifer's name on them.

111 X Q. 40. Why did you not bring them before?

A. I didn't think of them. I didn't know they was wanting. I may find some very old ones there.

X Q. 41. How long ago was it that those two men came to your house inquiring for an old man named Jenifer?

A. I don't [know] that I can exactly make the expression. I have called it so often it has slipped off my mind.

X Q. 42. Was it one or two years ago?

A. Worse than that.

X Q. 43. How much worse? When was it?

A. Put two more years to that.

X Q. 44. Were the men white or black?

A. They was white—them I saw was.

X Q. 45. How much rent in all do you suppose you collected from the houses on this O-street lot?

A. $400—somewhere there.

X Q. 46. Are you certain it was not as much as $500?

A. No, sir; I don't think it was.

ANTHONY DUTCH.

Sworn to and subscribed before me this 28th day of December, 1882.

JOHN CRUIKSHANK,
*Examiner in Chancery.*

Examination adjourned to Tuesday, January 2, 1883, at 7 p. m.

J. C., *Examiner.*

112 TUESDAY, *January* 2, 1883.

Met pursuant to adjournment.

Present: Counsel. Whereupon—

BENJAMIN M. BEALL, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiffs, deposes and says:

Question 1. State how long you have lived in Washington, and what your profession is, and how long you have practiced it.

A. I have lived in Washington nearly 29 years; I am a practitioner of medicine; I have practiced nearly ten years.

Q. 2. Did you know the late Thomas Jenifer, and did you ever attend him professionally?

A. Yes, sir; to both those questions.

Q. 3. Where was he living when you first attended him?

A. In an alley between 9th and 10th and N and O streets northwest.

Q. 4. Where was he living when you attended him the second time?

A. He was living in Samson street, between P and Q and 14th and 15th streets, northwest.

Q. 5. State as near as you can recollect the length of time
113 you attended him on Samson street?

A. As near as I can recollect, parts of the months — May and June, 1875, I think, was the year.

Q. 6. State in whose house he was when you attended him on Samson street.

A. I don't remember inquiring the name of the owner of the house. It was in the family of the gentleman present—I don't remember his name. (Indicating the complainant Dutch.)

Q. 7. While you were attending him in Samson street, did you see the lady behind you present? (Indicating some one present.)

A. Yes, sir; I don't know who it is.

Q. 8. What ailed Thomas Jenifer for which you treated him?
A. Paralysis.
Q. 9. State fully his condition at the time you treated him?
A. He had paralysis of one side, and also a condition known as varicose veeis in the leg of the affected side.
Q. 10. State whether he was able to leave his bed at any time while you treated him.

(Objected to as leading.)

114 A. Well, I remember when I treated him in the alley between N and O and 9th and 10th streets he was unable to get out even with the assistance of crutches, but during my treatment with the galvanic battery in Samson street there was a marked improvement, but I am unable to state whether he was able to get out-of-doors or not.
Q. 11. Did Mr. Jenifer, or any one for him, pay you any money for your medical services? If so, state as near as you can the time when you were so paid.

(Objected to as irrelevant & immaterial.)

A. I remember receiving $25, either on June 1 or July 1, 1875, for my services.

(Bill here shown, marked B. M. B. No. 1.)

That is my receipt for the money.

(Exhibit offered in evidence.)

Q. 12. Where was that receipt written?
A. If I remember rightly it was in the patient's room in Samson street.
Q. 13. Was it written at the time the $25 was paid you?

(Objected to as immaterial and irrelevant.)

A. If I remember rightly it was.
Q. 14. Was Jenifer, at the time you wrote that receipt, sitting up or lying down, or how?
A. I remember he was in the bed at the time.
115 Q. 15. Who were present? State the names of all the persons present at the time the money was paid and the receipt written.
A. Mr. Dutch, I believe, was the only one present at the time.
Q. 16. Did Mr. Dutch assist you in working the galvanic battery?

(Objected to as irrelevant and immaterial.)

A. I believe he did at times.

Cross-examined:

X Q. 1. How long do you think it was that you treated Jenifer, in all?
A. I think I commenced treating him April 25, and ended at the time of giving the receipt.

X Q. 2. Why did you then stop; was it because he no longer required medical treatment?

A. It was not because he no longer required it, but he wished to save the expense of my professional visits.

X Q. 3. Then he considered himself in a sufficient state of improvement, which you have said was "marked," to get along without further treatment?

A. He acknowledged that I did him a great deal of good,
116 but desired a cessation of visits, on the ground of his being in debt, I believe.

X Q. 4. Do you remember whether he said that he thought he could get along without having a doctor, about that time?

A. I don't remember him saying that.

X Q. 5. Did he employ, to your knowledge, any other physician after you ceased to visit him?

A. That I don't know. I lost sight of the man altogether after the payment of that money. I don't know when he died; I did not attend him during his last illness.

X Q. 6. At the time he paid you, do you remember where he took the money from—the place of its deposit?

A. If I remember rightly, he took his pocket-book from beneath the pillow of his bed.

X Q. 7. About the conclusion of your treatment of him, were his ailments of such a character as to prevent his getting in and out of bed, or were his natural passages made in bed?

A. I remember he was able to sit up, and I think he could take a few steps with some assistance.

X Q. 8. Was your attention directed to his mental condi-
117 tion? If so, state how you left him as to that.

A. In answer to that question, I might state that I did not notice any impairment of his mental faculties.

X Q. 9. If it should now be assured to you that he did not die until nearly three years after your last treatment of him, it would be only a fair inference that the improvement of which you have spoken continued, would it not?

A. I would not so conclude, because he was a man of an advanced age and was liable to interruptions in his progress towards full recovery.

X Q. 10. If the disease for which you treated him had continued its inroads upon his system without treatment, could he have endured it, do you think, for three years longer?

A. I have seen cases of paralysis in hospitals where the patient was bedridden for years. It is an affection where the patient may linger for an indefinite time.

X Q. 11. You know, however, that when you ceased to treat him his condition was that of "marked improvement?"

118 A. Yes, sir. I used the word "marked" because I remember Jenifer expressed himself when I commenced as believing that he would never be able to leave his bed. When I left him he was able to leave his bed and take a few steps with some assistance.

Redirect:

R. D. 1. You say, Doctor, that you discontinued your visits to Jenifer July 1, 1875. State what would be his ability to get out of bed on the 8th day of July, 1875, in your judgment.

A. His progress toward recovery was slow and tedious, and I could only suppose that there would be very little, if any, improvement in a week, after the treatment was discontinued.

R. D. 2. In point of fact, can you say that he improved any, only as you applied to him the galvanic battery treatment?

A. I believe the electricity was conducive to his good, and I cannot imagine that he would have improved as much without it.

R. D. 3. Would any other mode of treatment have done him any good, in your opinion?

(Objected to as leading.)

119 A. Various internal remedies are used, and the treatment in such cases is generally experimental.

B. M. BEALL, M. D.

Sworn to and subscribed before me this 2d day of January, 1883.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

MARY A. DUTCH, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiffs, deposes and says:

I am the wife of Anthony M. Dutch, the complainant in this suit.

Q. 1. State if you remember of Mr. Jenifer being brought to your house to live.

A. Yes, sir.

Q. 2. Were you at home the day he came?

A. No, sir; I was not at home in the day, but I was at night; I was in service.

Q. 3. State as near as you can the year and the month he came to your house.

A. It was on April 18th, 1875.

Q. 4. How soon after he came to your house did you leave your place of service and remain at home?

A. I came home the first of May.

120 Q. 5. How long did you remain at home?

A. I remained home then until the 10th of July.

Q. 6. Who took care of Jenifer while you were at home from May to the 10th of July?

A. My husband and myself.

Q. 7. What was the condition of Jenifer at this time as to being well or sick—in bed or out?

A. Well, sir, he was in bed nearly all the time; couldn't get out unless he was helped.

Q. 8. Do you remember seeing Dr. Beall at your house?

A. Yes, sir; I do.

Q. 9. Did you see any money paid to him by Jenifer or Dutch?

A. Well, I can't say rightly I saw it paid, but I heard them talking of it; but I remember seeing the doctor write the receipt. I saw that, because he stood up when he written it.

Q. 10. Do you know what a deed is?

A. A deed of property?

Q. 11. A deed of property; yes.

A. I have seen deeds of a piece of property.

121 Q. 12. Did you see anybody take to Mr. Jenifer any deed of property on any of the days between the 1st of July and the 10th of July, 1875?

(Objected to as leading.)

A. I did not, sir.

Q. 13. Do you remember of two men coming to your house along in the fall of the year 1875 and asking Mr. Jenifer about any money being drawn on his property? State all about it.

(Objected to as leading and also as referring to statements of third parties whose names even are not given.)

A. Yes, sir; I remember two men coming there either in the month of October or November, 1875, and they asked for Jenifer. I met them at the door and I taken them into the room where he was. Then I stood at the door and they asked him if he had not borrowed some money on his property, and he told them "No, never in his life," and they taken out a paper and told him there was $1,000 against it, and says he: "Why, no, indeed; never in my life," says he, and then says he: "Sho, sho; my cousin there
122 knows I never borrowed a cent." Then they asked him if he knew John R. Brooks. He told them "No, sir." They asked him if he knew Charlie Stewart. He told them he knew him only by sight. They mentioned another name, but I never could recollect his name; and they went away. They did not ask him any more questions.

Q. 14. When next did you hear of this deed of trust for $1,000 on Mr. Jenifer's property as near as you can remember?

A. I never heard no more of it until, I think it was, last July two years ago.

Q 15. Did Mr. Jenifer own any other real estate, to your knowledge, than the property in question?

A. No, sir; not that I know of. I never heard of any other.

Q. 16. Did the rents of his houses on the O-street property give him all the money he needed to support him?

(Objected to as leading.)

A. Yes, sir; I believe it did, as far as I see.

Q. 17. Who moved into Jenifer's house on the alley after he was taken out of it to your house?

(Objected to as immaterial.)

A. A man by the name of Joe Clay.

123 Q. 18. Who lives in the house on O street?

(Same objection.)

A. Sarah Wright.

Q. 19. How long has she lived there?

A. I think she has been there in the neighborhood of twelve years.

Cross-examined:

X Q. 1. Does your husband own any property; and, if so, where is it?

A. Yes, sir; Samson street, between 14th and 15th streets and P and Q.

X Q. 2. When did he build or buy it?

A. Near sixteen year- ago.

X Q. 3. Does he own any other property?

A. No, sir; not yet he don't.

X Q. 4. Do you mean by "not yet" that he has bought property and not finished paying for it?

A. No, sir; I don't mean he has bought any but that; he has paid for that.

X Q. 5. When did he finish paying for it?

A. I don't know exactly, but I think it was before Mr. Todd died. He bought it from Mr. Todd.

X Q. 6. About what time did he finish paying for it? State as near as you can.

124 A. Well, I am not sure about what time. It must have been five or six years ago, it seems to me.

X Q. 7. What day of the week did Jenifer come to your house?

A. Well, it has slipped my mind just now what day of the week it was, but I know what day of the month it was very well.

X Q. 8. Why do you know the day of the month?

A. I remember the day of the month; I had it written down, and my husband commenced from that time to attend to the rents of the houses.

X Q. 9. Where is the writing where you wrote it down?

A. It is at home.

X Q. 10. Who wrote it down for you, and is it in a book?

A. It is not in a book; it was written by a girl I raised.

X Q. 11. When did she write it down?

A. She written it the same month he was brought there.

X Q. 12. Who wrote down the 10th of July for you?

(Objected to because she has not said anybody wrote it down for her.)

A. I didn't have it written at all.

125 X Q. 13. How many months or weeks did you stay at home after you left service?

A. I stayed from the first of May to the 10th of July at home.

(Question repeated.)

A. Well, it was near ten weeks, as near as I can get at it; that is near two months and a half, sir.

X Q. 14. How do you remember that it was the 10th of July?

A. Why I remember, sir, by the day I went out to work again. I generally remember when I go out to nurse or anything of the kind.

X Q. 15. Where did you go on the 10th of July, 1875?

A. I went to stay with my daughter-in-law, on Marion street, between 6th and 7th and R and S.

X Q. 16. How long did you stay there?

A. Well, I wasn't home regular then until the last of September. I came backwards and forwards.

X Q. 17. What day of September was it that you came home?

A. I think it was on the 28th.

X Q. 18. How long did you stay at home then?

126 A. I was home then all the fall and winter. I don't think I was out any more while the old man was living. I used to go and come.

X Q. 19. When did you go out to nurse or service again after the old man died?

A. O, I have been out nursing often since then. I can hardly tell when. I did not go into service again until this present month. I am now out on service.

X Q. 20. What was the date of your first going out to service after the old man died and the date of leaving it?

A. Well, I never went into no particular service after the old man died until this winter; but the first of my going out — to nurse a lady the second day of November, four years ago. I stayed with her two weeks. I left her on the 16th day of November. I went out in March, 1880, I think—I forget the day of the month just at this time. I quit there on Friday. I only stayed one week at that place. The next place was the 28th of July, 1881; I am not sure; I go to so many places I forget. I stayed there four weeks. I dis-

127 remember what day I left—altogether four weeks. I came away and went back again. I don't know as I could count all the places I have been at; that is my business. I nurse white and colored, but now I am staying with a lady, taking care of a little child.

X Q. 21. Then you cannot pretend to give either the number of places where you have been employed nor the dates of your services during the past five years?

A. Well, I can't give them to you right along, though I know the places I have been; I have got them down in a book at home.

X Q. 22. What was Jenifer's condition on the 8th of July, 1876?

A. Well, he was paralyzed in bed.

X Q. 23. What was it on the 8th of July, 1877?

A. Of course it was the same, sir—if anything, weaker. He never got any better, so that he could handle himself, at all.

X Q. 24. Do you remember anything that occurred on those dates—July 8, 1876, and July 8, 1877?

A. Well, not in particular, sir, at this moment. I remem-
128 ber how he laid there in bed and how we had to wait on him.

X Q. 25. I don't mean what happened to Jenifer. Do you remember what [happened] on those days anywhere?

A. I don't remember just now—can't say that I do.

X Q. 26. Did Jenifer have much money while he was sick, and did he give you or your husband any during that time?

A. Well, he had his rents, sir; and I don't know as he gave my husband any cent, but he would give me a little change now and then.

X Q. 27. How many times did Jenifer go out of the house after he came to live with you?

A. He never was out of the house [after] the time that he was taken out of the squire's office, on F street, in a wagon.

X Q. 28. Do you know the date of that occurrence?

A. I know the date of the month and year, but not the date of the day of the week. It was January, 1875—no, it was January, 1876; I made a mistake; that is as near as I can think of it.

129 X Q. 29. Didn't you leave your house at all from May 1 to July 10, 1875?

A. Well, yes, sir; sometimes I would go to market or church or some place like that, but what I meant was that I was not regularly away from home—out at work.

X Q. 30. What visitors did Jenifer have, while he was at your house, besides the doctor?

A. Well, he had the priest for one, Father Barotti, and there was a good many of his church-members visited him.

X Q. 31. Then he was able to receive visitors while he was at your house, was he not?

A. Well, sometimes he would see them and sometimes he would say he did not feel like seeing them.

X Q. 32. Did you always stay in the room with him while he had these visitors?

A. Well, yes, sir; pretty much always. If I didn't I kept the door open between my room and his.

X Q. 33. For the purpose of listening, or for what purpose?

A. Well, yes, sir; many times I kept it open to listen; I did, indeed, sir.

X Q. 34. What object did you have?

A. Why, I felt interested many times, and wanted to hear what was going to be said.

130 X Q. 35. What interest did you have?

A. Why, the old man was helpless in bed, and I thought if anything did happen I might know it, so that if anything came up afterwards he might be helped, as he could not help himself.

X Q. 36. Did you not fear that something might occur in relation to his property, which was the object of your listening; is not that what you mean?

A. Well, I didn't always think that, but when I see people come on business, then I did, sir.

(Continued on page —.)

Examination adjourned to Thursday, the 4th January, 1883, at 10 a. m.

J. C.

JANUARY 4, 1883.

Met pursuant to adjournment.

Present: Counsel for plaintiffs and for defendants. Whereupon—

HENRY T. WISWALL, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the plaintiffs, deposes and says:

I came to know Mr. Jenifer in this way: Kitty Harper, one
131 of the complainants, employed me as counsel in 1874, or in the winter of 1874-'75—I cannot tell the exact date—to procure for her the possession of the house and lot No. 1428 Samson street. After doing so I heard she was not the daughter of Richard Wilson, and when she employed me in the spring of 1875 to procure a loan of money on her property I told her what I had heard and asked her to refer me to some of her relatives who knew whose daughter she was. Among others she referred me to Jenifer; took me into Dutch's house and introduced me to him. From Jenifer's statements, and those of others in regard to her, I procured for Kitty Harper a loan of money from Mr. Rohrer. A deed of trust was made for it, given by Kitty Harper and her husband, William, to Mr. Rohrer as trustee. It — from the record that that deed of trust was recorded in the register of deeds' office May 10, 1875. At my interviews with Mr. Jenifer he was at the house of the complainant, Anthony M. Dutch, 1426 Sansom street. All the times I ever saw Jenifer, except one, he was always in bed. From this date up to the date of his death, in March, I think, 1878, I saw Jenifer quite often. He employed me to make two wills and to warn Joe
132 Clay out of the house that Jenifer moved from on the alley, and also to warn Joe Clay out of another house on Jenifer's land, and this last suit was prosecuted before Justice Smith, not far from December, 1875. I think it was continued for a week or two, and on the trial I remember seeing Jenifer brought to Smith's office in a market wagon, on a mattress. I saw three men take him from the wagon, bring him into Smith's office, and put him in a chair. He testified in the case, and was taken away in the same manner that he was brought. I do not remember the date of the first will. The second will was made not far from March 1, 1878, and I only remember its date from hearing of his death quite soon—a week or two—after it was made. He sent for me on several occasions about some business in regard to his tenants—I don't remember now what. I found him a clear-headed, sensible old man, a man of very few words. He told me what real estate he owned, what it rented for, how long he had owned it, and that he did not owe anything in the world. He told me clearly and
133 particularly just what disposition he desired to make of his property. After I had made his will and read it over to him

he directed me to come in the evening, and he would have two other attesting witnesses. When I got there after dark he said he wanted me to alter the will, so that Mary Dutch, Anthony's wife, might have something by his will that she could do with as she pleased, adding that he didn't know how long he might live—that she was very kind and attentive to him. I accordingly made the interlineation in his last will that now appears there.

(Counsel for defendants objects because the testimony is *res inter alios*, irresponsive to the issues involved, and because it is as to declarations and conversations which took place out of the presence of the defendants.)

HENRY T. WISWALL.

Sworn to and subscribed before me this 4th January, 1883.

JOHN CRUIKSHANK, *Examiner*.

134 JANUARY 12, 1883.

Met pursuant to adjournment.

Present: Counsel for all parties. Whereupon—

JOHN H. STEWARD, of lawful age, a resident of Washington, D. C., a witness produced and sworn, deposes and says:

Question 1. It appears from the bill and answers in this cause that you were the highest bidder when the property was sold at public sale, in July, 1881, and that you made the required deposit of $100 with the auctioneer. Please state what you did in completion of the purchase-money on account of that sale.

(Question objected to as irrelevant and immaterial.)

A. I paid the $100 to the auctioneer, Mr. Dowling. I waited for the deeds that they agreed to give me through the court, which they failed to do, and I demanded my money back and it was paid me by Mr. Dowling, by Mr. Peter's order. Mr. Peter stated (all statements of Mr. Peter objected to) he being present at the time—Mr. Peter being present—that he didn't think there could be a deed
135 given, and gave the order for the $100, which was paid.

Q. 2. Did you know, at the time you bid the property off, who was the holder and owner of the note secured by the deed of trust mentioned in this bill?

A. No.

Q. 3. Did you know for whom Mr. Peter was acting on this occasion?

A. I think he was acting for the plaintiff—for the lady who lent the money—some lady, he said, in Georgetown.

Q. 4. Is Mr. Peter a lawyer?

A. I presume so, sir; he said he would give me a title, or no sale.

Q. 5. Did you have any conversation on that occasion with Mr. Dodge, defendant in this cause—on the occasion of this sale?

A. Yes, sir.

Q. 6. State what he said on this subject.

A. He told me that he should give me a good title through the

court or he wouldn't sign the deed. When the protest was read at the sale there, I did not intend to bid, nor any one else, I think, that there was round—and then—I don't know whether Mr. Dodge was there or not—I think he was, though I couldn't say positively.

136 Q. 7. Did you ever see Dodge and Darneille, or either of them, after the day of this sale, in reference to their giving you a deed of this property?

A. Yes, I saw them both several times—Mr. Darneille in particular; Mr. Darneille wrote to Mr. Peters — I was anxious to pay the money.

Q. 8. State fully all the reasons that Dodge and Darneille, or either of them, gave you why they did not give you a deed of this property.

(Objected to as immaterial and irrelevant.)

A. Mr. Darneille told me time and time again that he wrote to Mr. Peters—kept me waiting—and asked me to have patience—that he expected him in town every day—that he would take the matter into court and have the deed consummated.

Q. 9. How long did you wait to have them give you a deed before you demanded your money back?

A. I think it was either September or October, 1881—I could not say positively—I took no memorandum.

Cross-examined by Mr. JONES:

137 X Q. 1. Did you employ anybody to examine the title after the purchase?

A. No.

X Q. 2. Did you employ anybody to write the deeds?

A. No; they were to give me the deeds through the court.

X Q. 3. Did they not say to you that the title was good, and if anybody was to go to court that you should take it there?

A. No, sir.

X Q. 4. Did you not refuse to comply with the terms of sale or to pay any money until they obtained a decree of the court making the title good?

A. No, sir; I mean that I did not fail to comply with the terms on my part; I did refuse to pay any more money until I got the deed through the court.

X Q. 5. Do you know a man named George E. Boston, and was he a friend of Thomas Jenifer, deceased?

A. Yes, sir; I think he was—intimately.

X Q. 6. Did not George E. Boston tell you that Jenifer did borrow that money and give that deed of trust, and also what the money was used for?

(Question objected to by Mr. Wiswall as hearsay and incompetent.)

138 A. Boston stated that he knew all about the deed of trust, and stated that I ought have kept the lot, and it was a cheap

piece of property, and the deed of trust given by Jenifer for $1,000 — to loan to Judge or Judd.

X Q. 7. His nephew?

A. He said it was to put an addition to his house on Sampson street, and he said that Judge got the money, and stated that I ought to have held on; that he knew all about it at the time of the sale—that it was a good deed of trust—that the deed of trust was valid, or something. He only told me this once, about two or three days ago.

J. H. STEWARD.

Sworn to and subscribed before me this 12th day of January, 1883.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

Continued from page —.

Cross-examination of MARY A. DUTCH continued, as follows:

X Q. 37. Did you not expect that Jenifer would leave his property to you or your husband, and were you not anxious to prevent
139 any other disposition of his property, and is not that the reason that you listened when he had visitors?

A. Well, sir; he always promised that he would leave us plenty to pay us for our accommodation to him, but I didn't feel that I wished to have all that he owned; still I felt that I would like to have just what he willed to us or to me. Then, again, I would listen to see or to hear whether he was satisfied at my treatment while he was sick, for fear if he wasn't satisfied that he would tell people that I didn't treat him right.

X Q. 38. You have said you know what a deed is. Do you mean by that that you can tell whether a piece of paper is a deed or not without reading it?

A. I said I had seen a deed, did I not? But I don't know right well what a deed is. I couldn't tell unless I did read it, and then I don't think I could read it, really, good enough to understand it all.

X Q. 39. You wouldn't know a deed from any other piece of paper, would you, if *there were* several papers folded like a deed were shown to you?

A. I would not, unless I took hold of it and looked through it.

140 X Q. 40. What two men were these that you say came to the house and talked to Mr. Jenifer about borrowing money on his property?

A. I didn't know them at all, sir; but the gentleman who sat over there the other night looked very much like one of them. I couldn't say whether he was or not.

X Q. 41. What did they say they wanted when you met them at the door?

A. They asked me did Thomas Jenifer live here? And I told them he did. Then they asked me could they see him? And I told them "Yes, sir." I invited them in, and then I went into the room—to Mr. Jenifer—and I told Mr. Jenifer there was two gentlemen to see him. He told me to ask them in—to tell them to come

into his room, and when they went in he did not know them at all.

X Q. 42. What was the first thing said by any one after they got into the room?

A. Well, I most forget. I don't like to say, positively, but I think they asked him how he was; but I remember well when they asked him about borrowing the money.

X Q. 43. What was the first thing said about borrowing money?

A. I think, as well as I can recollect, that they told him
141 they had a note against him, or something that way, but I don't remember who they said had it against him.

X Q. 44. Did they ask him to pay, or did they want the money for the note?

A. They didn't ask him to pay it, nor they didn't say they wanted money for it; but they only asked him did he borrow it, and he told them "No."

X Q. 45. Did they show the note and say they had come to see about collecting it?

A. Well, they opened a book and held a piece of paper like this (picking up a sheet of paper). It was a large thin book, as well as I can recollect, that they opened. They held the piece of paper in their hand and said "Here's $1,000 against you which you have borrowed on your property." The old man he got very crabbed and short at that time. He was mad. He says, "No, no, no indeed;" he says, "I never has borrowed a cent in my life." Then he said, "Sh—, my cousin here knows I never borrowed a cent."

X Q. 46. Was the cousin he meant your husband, and were you both in the room at this time?

142 A. Yes, sir; my husband was his cousin, and he was standing just in the door, and I was standing beside him.

X Q. 47. Now, what year was it when these two men called and this interview took place?

A. 1875, sir; well I disremember what month—it was cold weather—October or November. It was getting cool. One of the gentlemen had on an overcoat; they both had on overcoats.

X Q. 48. How do you know that was not the year 1877?

A. Why, I am pretty sure it was the same fall after he was carried to my house, unless I am very much mistaken, and I don't think I am, sir.

X Q. 49. What makes you sure it was that fall, and not the next fall, or the fall after?

A. Well, sir; I kept it in my mind, for one reason, that Morris Rawlings—I think his name is—Mrs. Wright's son, that lives in Mr. Jenifer's house, came over there before that and told Mr. Jenifer that Dr. Purvis said that there were some fellows were getting out a forgery—something that way—on his property, and Mr. Jenifer paid Morris for coming—gave him fifteen cents.

143 X Q. 50. So that is the only reason you remember it was the year 1875, is it?

A. Well, that is one reason why I remember it, but it seems to me it was the fall after he came there, but I may be mistaken in it.

X Q. 51. You stated that you would bring with you the piece of

paper on which the girl you raised wrote down when Jenifer came to your house; have you got it with you?

A. No, sir; I have not; I have not been home but once since I was here, and hadn't time to look it up; I will give it to Mr. Wiswall.

(Mr. Wiswall agrees to file it.)

X Q. 52. What is the number of your family? Give the names of those that live at your house.

A. Anthony M. Dutch, my husband; Mary A. Dutch—that's myself—and Maria Johnson, his sister. That's all at present.

X Q. 53. Who comprised your family while Jenifer lived at your house?

A. The same except Maria Johnson—and the girl I raised lived there then; her name is Lucinda Dutch. She was in her 14th year when he came there; she is 21 now, nearly. She is now up
144 on 8th street, between R and S, in this city; she is not now in service; she is not able to work; she does not live with me now; it has been two years since she left me; she went off to herself; at least she went to work for herself; she is not my own daughter; she is my sister's daughter that I raised.

X Q. 54. While she was living with you she kept house for you while you were absent, did she not?

A. Yes, sir; with the exception of when she was at school.

X Q. 55. What is you husband's employment, and what has it been since 1874?

A. I don't think he has had any employment since that time, only little jobs around—no particular employment.

MA'Y DUTCH.

Sworn to and subscribed before me this 12th day of January, 1883.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

Examination adjourned to —— the — day of ——, 1883.

J. C., *Examiner.*

145 (It is here admitted by counsel for defendants that C. M. Matthews, Esquire, would, if present, testify that he appeared as counsel for complainants, and protested against the sale in May, 1882. This admission is made because Mr. Matthews, being professionally engaged, cannot be present to testify.)

Examination adjourned to Monday, the 8th day of January, 1883, at 11 a. m.

J. C., *Exam'r.*

146 In the Supreme Court of the District of Columbia.

DUTCH *et al.*
*vs.*
DODGE *et al.* } No. 8243. Eq. Doc. 22.

At an examination held in this cause before me, an examiner in chancery, pursuant to notice, said examination commencing on the

first day of February, 1883, and ending on the 16th day of March, 1883, personally appeared James N. Callan and Robert P. Dodge, the witnesses within named, on behalf of the defendants, and, after the witnesses had been duly sworn to speak the truth, the whole truth, and nothing but the truth touching the matters in issue, the within depositions were taken down from the statements of the witnesses, read to them, and signed by them in my presence.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

147 THURSDAY, *February 1st*—7 c'k p. m.

Met pursuant to notice.

Present: Solicitors for respective parties; also the examiner.

Mr. JONES: The defendants interpose a general demurrer to the complainants' case and say that the testimony adduced does not support the bill, and move that the bill be dismissed upon the testimony taken by the complainant-.

Not waiving the above demurrer, but insisting upon the same, the defendants proceed with their testimony, as follows:

JAMES N. CALLAN, being produced as a witness, of lawful age, on behalf of the defendants, and being first duly sworn, deposes and says as follows:

Direct examination by Mr. JONES:

Q. Please state your name, age, occupation, and residence.

A. James N. Callan; forty-four years of age; I am a claim agent, practicing claims before the Departments, and also a notary

148 public: Washington, D. C.

Q. Were you a notary public in July, 1875?

A. Yes, sir.

Q. At that time where was your office?

A. I had no office at that time; I was appointed notary public on the 22d day of March, 1875, and did not have an office until the following year.

Q. Did you know a colored man named Thomas Jenifer?

A. Yes; I knew a colored man named Thomas Jenifer for, I suppose, thirty-five or thirty-six years.

Q. What was his occupation?

A. He was a porter around a grocery store near 7th and Market Space, principally at Edward Holl's store.

Q. There is a deed of trust purporting to be signed by Thomas Jenifer before you as notary, dated July 8th, 1875, made to Dodge and Darneille to secure a note for one thousand dollars to the order of one John F. Hall, and conveying lot H, in square 367, which purports to have been signed by Jenifer by his mark, witnessed by you, and then the acknowledgment filled in by you as notary

149 public. State what you know and remember concerning it.

A. All I know about that acknowledgment is (I was trying now to fix the date. You say it was July 8th, 1875. I was in Nor-

folk on the 4th of July; the 5th was Monday. I was here in Washington on the 8th; I was home on the 7th) that there was a gentleman came where I was living at that time, 354 Pennsylvania avenue, and inquired for me, Callan, a notary public, in that neighborhood. One of the young men living in the house with me brought him into my room. I was lying down, and he said, Mr. Callan, an old colored man, Mr. Jenifer, wants you to come and take his acknowledgment. I told him I would go. He had a carriage there, and we took it and went to where Mr. Jenifer was. He expressed surprise at bringing a young Mr. Callan, as old Mr. Nicholas Callan, my uncle, had always done business for him, and he at one time owned this property conveyed in this deed, and had always been his friend, and my aunt, Mrs. McQuillan, had been a great friend of his,
150 and he said that as long as I had come by mistake, being the wrong Mr. Callan, he would not send me away; so he executed the papers before me.

Q. Where did you find him?

A. I found him in bed. He was lying down and got up partly—half-sitting-up position—while the paper was being read to him. The man with me read it to him. He made his mark, and also made the remark about somebody had not done fair with him, and that it would be done fair this time.

Q. Did he make his mark; how did he execute the paper?

A. By touching the pen.

Q. Did you hold the pen?

A. I did, and he touched it.

Q. He acknowledged it before you?

A. And he acknowledged it before me. I was going away without taking his signature to the note, and Mr. Hall (the man that came for me) called me back to have the note signed and witnessed, which I did.

Q. Do you know where the house was you went to take this acknowledgment?

151 A. No, sir; I can't say positively where the house was.

Q. You were told that you were going to his house?

A. Yes, I went, and there he was in bed.

Q. Here is an affidavit which you filed in this case, and there [is] a sentence in parenthesis in which you say that the residence you went to was on O street, between 9th and 10th streets, on lot H, square 367; can you explain about that parenthesis; who prepared the affidavit?

A. I guess you (meaning Mr. Jones) can explain that better than I can. You (meaning Mr. Jones) prepaid it.

Q. In regard to the note; he also made his mark to the note?

A. He also made his mark to the note.

Q. To whom did you give the note and deed of trust after they were executed?

A. Mr. Hall took the deed of trust and note and got into the hack. There were several there. Mr. Hall put them in his pocket for fear the ink would spill on them.

Q. You have no interest in this suit?

A. None in the least.

152 Q. When you gave me the data to prepare the affidavit you told me you went to his residence?

A. Yes, sir.

Q. Did you tell me it was on O street, between 9th and 10th streets?

A. No; I never knew he lived on O street.

Q. This part in the affidavit in parenthesis was not put in right?

A. I think you (meaning Mr. Jones) added that without my knowing it.

Q. You have seen the note since?

A. George Peter, the lawyer, showed it to me.

Q. And it was the signature or mark of Jenifer?

A. Yes.

Q. When did you have your office as notary public on Louisiana avenue?

A. It strikes me it was in the spring of 1876, just before I went over to Philadelphia to the Centennial.

Q. Did Charles W. Stewart and H. H. Dudley have a ring or pool in your office?

A. Not that I knew of; strikes me that Mr. Stewart had left these parts then in 1876.

153 Q. When the deed was executed did Jenifer understand it thoroughly; did he know what it was?

A. Yes, he did; it was read over to him.

WITNESS: I will state in reference to that office that the two Carringtons and H. H. Dudley and Burger Burnstine and myself had an office together—that is, we had desk room in the same office.

Q. That was in 1876?

A. That was in 1876.

(The note is here produced and filed in evidence, and is marked No. 1, J. N. C.)

Q. Look at that signature; is that your signature as witness to the mark of Jenifer?

A. Yes, that is mine. This is the note referred to in this case.

Cross-examination by Mr. WISWALL:

Q. Were you a witness in the equity cause No. 5832, Saunders *vs.* Dodge & Darneille?

(Mr. JONES: Objected to as not material to the issue in this case.)

A. I think I was; he was a colored boy my father raised, called James Hoban.

Q. Did you testify that you took the acknowledgment of the deed mentioned in that bill?

154 (Mr. JONES: Objected to for same reason.)

A. I testified that I took the acknowledgment of Saunders.

Q. Was H. H. Dudley a witness in that case?

(Mr. JONES: Same objection.)

A. I don't know whether he was or not; I was not a witness in the court only in taking testimony.

Q. Do you know what the decision of the court was in that case?

(Mr. JONES: Same objection.)

A. No, sir; I understood that the court sustained the point that he had signed his father's name wrongfully.

Q. Do you remember the date of the note mentioned in that suit?

(Mr. JONES: Same objection.)

A. I do not.

Q. Was it after or before the date of this note?

(Mr. JONES: Same objection.)

A. That I cannot say, for I do not know.

Q. Was not your office in the same room with Dudley at the time that deed was acknowledged?

A. No; I don't think I had any office at that time.

Q. Do you know how Dudley swore on that point?

155 (Mr. JONES: Same objection.)

A. I do not; I do not believe he swore at all.

Q. Where were you when, as you say, you received the note and deed in this case to take the acknowledgment?

A. I was at the corner of Pennsylvania avenue and 7th street, No. 354, southeast corner.

Q. Who gave it to you?

A. A gentleman by the name of Hall.

Q. Can you give his given name?

A. No, sir.

Q. Was it John T. Hall?

A. That might have been his name.

Q. Was he the payee of the note; was the Mr. Hall who gave you the note the payee in it?

A. The man that gave me the note was the man making the loan.

Q. Was he the payee in the note?

A. I think he was.

Q. Did you know him?

A. I don't think I ever saw him but once or twice.

Q. Do you know what has become of him?

A. I cannot say; I would not know enough to give testi-
156 mony upon that point; but some time ago, I think, I heard that he was in Virginia a little while after that.

Q. Do you think he was residing in Virginia at the time?

A. No, I think I heard afterwards he was in Virginia.

Q. Did you understand that his residence was here in Washington when he gave you the note?

A. I didn't ask him where he resided.

Q. How long had you been acquainted with him?

A. I suppose I had known him for not more than a year. I only knew him by sight; I did not know his name.

Q. Remember seeing him ever afterwards?

A. I can't say that I do.

Q. Did you ever know a man by the name of John T. Hall in Washington?

A. I understood there was a man here by that name in the brokerage business.

Q. When?

A. Some eight or ten years ago, I expect, in the firm of John W. Maury & Company, on Seventh street.

157 Q. How did you go to the place where you found Jenifer?

A. Went in a carriage. Mr. Hall had a carriage with him.

Q. What time of day?

A. It was in July; I suppose just after dinner; I know I was lying down. I had been over with the militia on the 4th of July, in Norfolk, and I "was not feeling extra good" the balance of the week.

Q. Describe the house where you found Jenifer.

A. I cannot; I did not take sufficient notice of that.

Q. Will you now swear that the house where you went and found Jenifer was on O street?

A. No, sir; I have been trying to fix it in my mind, but I do not think I can state positively what street it was on.

Q. Was it on some street?

A. I presume it was. The carriage drove up pretty close to the house.

Q. Were you ever at Jenifer's house before or since?

A. Not that I am aware of.

Q. Was any one with Jenifer when you went in?

158 A. Yes, sir; somebody opened the door for us. I am not sure whether there were two or one person there when we went in. There was a woman there. I am not sure whether there was a man there also.

Q. Did you go up steps to get into the house?

A. There were very little, if any. I don't remember any at all. We did not go up to the upper story in the house. We were on the first floor. We did not go up any steps that I recollect.

Q. Did you find Jenifer in the front or back room?

A. I am under the impression that he was in the back room.

Q. How old was the woman that you saw with Jenifer when you went in?

A. I am not able to say.

Q. Was she a young or an oldish woman?

A. I cannot say.

Q. Can you tell whether the house that you found Jenifer in was south or north of the 14th street circle?

A. I do not know how that may be. I do not think it was

159 south; very likely it was north of it, judging from the distance we traveled.

Q. Did you understand that the Mr. Hall that went with you was the payee of the note?

A. I had no understanding upon that subject at all.

Q. Did you not think it strange that Jenifer should entrust a note for one thousand dollars secured by a deed of trust on his real estate to two strangers?

A. I didn't know that Mr. Hall was a stranger to Mr. Jenifer, and I was very sure I was not.

Q. Did Mr. Jenifer know that you went in lieu of your uncle until you told him so?

A. I don't think he recognized me as one of the Callans at all until I told him who I was.

Q. Hall you understood to be a total stranger?

A. I did not say anything of the kind. Hall endorsing his note for one thousand dollars, I didn't think he would be a stranger. Hall knew where he lived, knew where to go, and knew where to take me.

160 Q. Did Jenifer speak to Hall as though he knew him?

A. I don't know what rule I could lay down to answer that question.

Q. Did Hall introduce you or you introduce Hall, or both introduce yourselves?

A. Mr. Hall said he had found Mr. Callan and Mr. Jenifer said, But not the one I wanted; his uncle was an old gentleman who used to own this property; he has always transacted business for me. I thought it strange that Jenifer should not recognize me, as he knew me very well in raising volunteers for Mexico. I had outgrown him I suppose. He knew me before I got done talking to him.

Q. Did Jenifer say he wanted to give the deed of trust on the property on which he was living to secure that note?

A. No, sir.

Q. You swear to that in you- affidavit?

A. No, I did not.

161 Q. Did you swear in you- affidavit that Jenifer wished to give the property upon which he lived as security for the payment of the note?

A. I didn't know that he owned the property where he lived.

Q. Did you so swear in your affidavit?

(Mr. JONES: Question objected to, as affidavit will speak for itself.)

A No, I did not. I did not know that Mr. Jenifer owned the property.

Q. Do you mean to say that you did not swear in your affidavit that Jenifer stated when you called on him that he wished to make a deed of trust on the property on which he lived to secure that note?

(Mr. WISWALL: Here is your affidavit if you want to see it.)

A. I don't remember Jenifer using any such language to me that he wanted to borrow on the house in which he lived. He had an abstract of the title to the property on which the loan was made. I don't remember his making use of the words, "the property where I live."

Q. Did you swear in your affidavit that you went to the
162 residence of Thomas Jenifer, on O street, to take the acknowledgment of that deed.

(Mr. JONES: Objected to, as the affidavit speaks for itself.)

A. I swear that I went to his residence to take the acknowledgment of that deed.

Q. Did you also add "which was on O street?"

A. I didn't add anything to it.

Q. I ask if you did not swear to it.

(Mr. JONES: Objected to, as the affidavit speaks for itself.)

Mr. WISWALL: You would not swear that you did not know what you were swearing to in that affidavit?

A. I do not know that I ought to question the affidavit by parole testimony outside of it. After I gave Mr. Jones the points to make the affidavit up I took it to a notary public and swore to it, supposing it was as I told him.

Q. Without reading it you swore to it?

A. I gave the matter to a capable and competent attorney and I supposed it was all right.

Q. Did you swear in your affidavit filed in this case that
163 you went to the residence of Thomas Jenifer, which was on O street, between 9th and 10th streets, and on lot H, square 367, when, as you say, you took the acknowledgment of that deed?

(Mr. JONES: Question objected to as being already answered.)

A. I swore to the affidavit, which was filed as an exhibit in this case, without having noticed the sentence in parenthesis.

Q. Is it true that you went to the residence of Thomas Jenifer, on O street, and took his acknowledgment of that deed?

(Mr. JONES: Objected to as being already answered.)

A. I cannot specify any street, for I do not know that Mr. Jenifer lived on O street. I went to his residence, where he was in bed, and took his acknowledgment.

Q. Then you will not swear that you went to his residence, on O street, and took the acknowledgment of that deed?

(Mr. JONES: Objected to as already answered.)

A. No, sir; I don't know that I ever saw Mr. Jenifer on O
164 street; don't know that he ever lived there. Of course I would have to have some acquaintance with the facts before I could swear to it.

Q. Your answer is that you will not swear that you went to his residence, on O street?

A. No, sir; I will not.

Q. State in what condition you found Mr. Jenifer on this occasion as to being sick or otherwise.

A. I found him confined to his bed. He told me he was suffering for a good while. I remarked that I had missed him for some time.

He told me that it had been some time since he had been out. He was in tolerable good spirits, but not in very good health.

Q. When next did you see the deed and note in question?

A. I don't know that I ever saw the deed afterwards. Mr. George Peter and his brother, Dr. Armstead Peter, called on me one day and showed me the note and asked me if that was my signature on there. I told them it was.

Q. State in that connection when they showed it to you.

165 A. I think it was as vouchers two or three years after the note was made that Mr. George Peter showed it to me.

Q. Where?

A. That I don't know; I don't recollect.

Q. Who wrote the words "Thomas Jenifer?"

A. I think I did.

Q. Where?

A. That I don't know; I think it is my handwriting.

Q. Can you not state where?

A. No; I cannot.

Q. Will you swear it is in your handwriting?

(Mr. JONES: Let the witness see the note. I object to the question being answered unless the witness sees the note.)

A. I am under that impression.

Q. Where do you think you wrote it?

A. I don't know; have no idea in the world.

Q. Did you write it at Jenifer's house?

A. That I cannot say; I don't know.

Q. If you didn't write it at Jenifer's house where did you write it?

(Mr. JONES: The witness need not answer unless the note is shown.)

166 A. If I did write it I must have written it at Jenifer's house.

Q. Where did you write the words "Witness, J. N. Callan," on this note—in what house or place?

A. That I cannot say.

Q. Did you write it at Jenifer's house when you witnessed it? In what house did Jenifer make his mark?

A. I never saw him but in the one house.

Q. Was he in bed when you wrote it?

A. Yes, sir.

Q. Who gave you the pen?

A. I took it and he held it.

Q. Who gave the pen to Jenifer?

A. I did.

Q. Then, if you gave him the pen, don't you think you wrote the words "Thomas Jenifer," and also under it "his mark?"

WITNESS: I would like to see the paper, so I can speak with more certainty about it.

Mr. WISWALL: Look at it as much as you please. (Handing the note to the witness.)

A. Yes, sir; I believe the words "Thomas Jenifer" and "his mark" are all in my handwriting.

Q. Will you swear positively?

167 A. To the best of my information and belief, I will, sir. I think I can recognize that "T" and "J" as mine.

Q. Will you swear that the "Thomas Jenifer" and "his mark" are written with the same ink that the rest of the note is written in?

A. No, sir.

Q. Or that "J. N. Callan?"

A. I am under the impression that the note was filled up before I saw it, except the "Thomas Jenifer" and "his mark" and my name as witness.

Q. The question is whether the "Thomas Jenifer" and "his mark" are written with the same ink as the rest of the note. (You are considerable of an expert in this business; I am willing to take your testimony upon it anyway.)

A. I do not believe that the signatures on the note are made in the same ink that the body of the note is filled up with.

Q. Are the "Thomas Jenifer" and "his mark" written with the same ink as "Witness, J. N. Callan?"

A. Yes, sir.

Q. Do you swear that you wrote them both?

168 A. I can only swear as far as my information and belief goes; I believe I did.

Q. You won't swear that you wrote them both?

A. I will swear that I believe I wrote them both.

Q. Where did you write them both?

A. That I cannot say.

Q. Were they not both written before you started from your office?

A. No, sir.

Q. Were they written on the road?

A. Not on the road either, sir.

Q. When was your attention called to that signature—how long after the making of it?

A. I suppose between two and three years.

Q. What did they ask you about it then?

A. Mr. Peter came to me and wanted to know if that was my signature, and I told him it was; and then he asked me if I took the acknowledgment, and I said I did. He asked, Do you know who made the loan? I told him I did not. But coming, as

169 he said, from his brother's mother-in-law, I know that Messrs. Dodge & Darneille used to do a good deal of business for her. He went off and didn't speak to me about it again, unless in Rockville, where I may have mentioned it to him. He never showed it to me any more.

(Mr. DARNEILLE: I showed it to you.)

Q. Did he call your attention to it when the first interest on the note became due?

A. That I cannot say. It was some time after.

Q. When would the interest become due?

(Mr. JONES: Objected to, as the note itself will show.)

(Question withdrawn.)

Q. Did Dr. Peter, or either of the Peters, call your attention to this note when the first interest became due?

(Mr. JONES: Objected to because the witness has said it was two or three years afterwards.)

A. I know it was after that.

Q. Did they call your attention to it when it became due the second time?

170 A. I don't know that they called my attention to it about the time the interest became due at all. The first time they spoke to me about it was more than a year after it was made.

Q. Do you think the note had become due when they spoke to you the first time?

(Mr. JONES: Objected to as having been already answered three or four times.)

A. I am under the impression that they came to my office (I had opened a new office at No. 610 Louisiana avenue); that they came by and spoke to me about it. I think that was the year Mr. Hayes came in by a majority of one (that was in 1877), and I am under the impression it was that year.

Q. Was it when the note became due?

A. They never spoke to me about the note being due or the interest being due. I don't remember whether the note was due or not when they spoke to me the first time.

Q. When did they next call your attention to this note—

171 speak to you about it?

A. I don't know that they ever spoke to me more than once about it.

Q. When they spoke to you about it did you go fully into the history of the note and deed of trust and tell them all about it?

A. Not as I have to you to-night; no, sir.

Q. State as near as you can recollect what you did tell them.

A. I told them that I knew Mr. Jenifer, the party making that note, ever since he was a boy, and knew he was the man that made it, but I did not know who had negotiated it, but, as they suggested, I think he said my brother's mother-in-law. I said prehaps they ought to make inquiry of Messrs. Dodge & Darneille, as they made negotiations for Mrs. Kenna generally.

Q. Did Messrs. Dodge & Darneille ever have an interview with you in regard to this note?

A. I don't remember having an interview with them until some time recently—about the time the sale was made.

Q. Which sale?

172 A. The one to John Stewart; that time I spoke to Messrs. Dodge & Darneille and M-. Stewart; Mr. Stewart came to ask me about it.

Q. What did you tell them?

A. That everything was straightforward about it—that the deed of trust was properly executed; I believed the money had been loaned by Mrs. Kenna; this was just before the sale, I believe.

Q. Did you have an interview or talk with Mr. Dodge about this note before Dodge or Darneille, or either of those gentlemen, executed the release of this property in September, 1880?

A. Mr. Dodge spoke to me about it in his office on 4½ street. Young Danenhower had been down there to get the release, and then Mr. Dodge talked to me about it; he wanted to know if I would recollect anything about the transaction; if what I recollected about it was all right; if I was clear upon what I could give. I think after that I did give Mr. Darneille a certificate on 15th street of about the same purport, which, I suppose, you remember (witness speak-
173 ing to Mr. Darneille), written by Mr. Myers.

(Mr. DARNEILLE: I recollect very well.)

Q. Do you know how Mr. Dodge came to change his opinion in regard to the validity of that note and deed?

A. I didn't know what his opinion was about them.

Q. Didn't know he had changed his opinion?

A. I didn't know he had changed his opinion.

Q. He swore in his answer that he had a new revelation about it.

A. I don't know it.

(Mr. JONES: He does not swear to it.)

Q. Did you have any talk with Mr. Dodge or Darneille, or either of them, or with the Peters, after the sale to Stewart in July, 1881?

A. I don't remember having a conversation with either of the Peters in regard to it after the sale to Stewart. I don't know that I had any conversation with Mr. Dodge. He may have stopped and talked to me upon the subject casually in his office, but I don't remember what conversation took place. I am sure I had noth-
174 ing to say to the Peters for three or four years after about it. I have spoken to Mr. Darneille about it.

Q. Can you explain why Messrs. Dodge & Darneille gave the deed to Cissell and refused one to Stewart?

(Mr. JONES: Objected to, as there is no such testimony on record, and if there was this witness would not be aware of it.)

A. I did not know that they had refused one to Mr. Stewart.

Q. Did you know that he was the highest bidder and didn't get it?

A. So he told me. He told me he had bid it off at auction.

Q. Told you he didn't get it?

A. He hadn't got one at the time I was talking to him about it.

Q. Do you know why Messrs. Dodge & Darneille gave a deed to Cissell and refused one to Stewart?

(Mr. JONES: Same objection.)

A. I have no reason for knowing why they refused one to Stewart, or that they ever refused one to him. I would naturally have

supposed that Stewart did not comply with the terms of sale, or they would have given it.

175 Q. Did you ever go to Thomas Jenifer and ask him about this—whether he made that note and deed—afterwards?

A. No, sir.

Q. Do you know anybody that ever did go and ask him if he made them?

A. I do not.

Q. Do you know whether Thomas Jenifer ever received a dollar for that note?

A. No, sir; I do not know.

Q. Was not that note in fact negotiated at your office?

A. No, sir.

Q. Will you swear positively, Mr. Callan, that C. Stewart did not bring that note to your office?

A. I will swear positively that Charles Stewart did not bring that note to my office. I never had anything to do with the negotiation of that note.

Q. Did H. H. Dudley have anything to do with the negotiation of that note, or have anything to do with it?

A. I only know from what I have heard; nothing of my own knowledge about it.

(Mr. JONES: All of these questions are objected to.)

176 Q. Do you know to whom Dodge paid the money?

A. No, sir; I was not present when the money was paid.

Q. Have you ever been informed to whom Dodge paid the money?

(Mr. JONES: Objected to.)

A. I have never been informed.

Q. Did you see any of the money after Dodge paid it?

A. I never saw any of it, sir.

Q. When you went to Jenifer's house what was said to him about when and where and how he was to get the one thousand dollars? State fully.

A. I don't know that any allusion was made to the time or place or circumstances of the settlement. I supposed that the arrangement had been made previously between the parties.

Q. Did this man Hall say anything to you that led you to suppose any such thing?

A. Yes; he said this man was a pretty close old fellow to do business with.

(Mr. WISWALL: Close old fellow! It seems that he entrusted
177 a note for one thousand dollars with him.)

Q. How come that "Exhibit No. 1, J. N. C.," put on there?

A. That I don't know, sir.

Q. Whose writing is it?

A. I should not be surprised if it was my writing.

Q. How is the fact?

A. It looks very much like my handwriting.

Q. Will you swear it is your handwriting?
A. I believe it to be my handwriting.
Q; When did you write it there?
A. I cannot say, sir.
Q. For what purpose did you write it there?
A. That I suppose was better known to the attorney who wanted it there.
Q. I asked you why you put it there.
A. I do not know.
Q. What was the occasion for putting it there?
A. I do not remember.
Q. Was a suit or bill filed on it?
A. Except this one I have not heard of any other case.
178 Q. Can you explain why you wrote "Exhibit No. 1, J. N. C.," on this note?
A. I don't remember when I put it there, nor why I put it there.
Q. Did Mr. Jones request you to put it there?
A. I think my answer covers that point. I don't know whether Mr. Jones requested it, nor when I put it there, nor why I put it there.
Q. Why do you hesitate telling?
A. I don't hesitate to tell so far as I know; I am willing to tell everything I know.
Q. Is it not because Mr. Jones told you not to tell?
A. If Mr. Jones told me, you heard him.

(Mr. JONES: I never told you.)

Mr. WISWALL: I ask you (addressing witness) — I have been very busy here.
Mr. JONES: Did I tell you anything about it (addressing witness)?
WITNESS: No; I did not hear anything about it.

Q. When did you last see this note before to-night?
A. I am not able to state when or where it was.
179 Q. Who showed it to you then?
A. That I cannot say.
Q. Did Mr. Jones ever show it to you before?
A. Mr. Jones may have shown it to me.
Q. Did Mr. Jones have it in his possession when he showed it to you—did he show it to you in his office?
A. He did in his office if he showed it to me at all.
Q. Did Mr. Jones ever bring suit on this note?
A. Not to my knowledge.
Q. Did anybody else ever bring suit on this note?
A. Not to my knowledge. I have no recollection of ever hearing of any suit but this one.
Q. Can you tell how long ago it was?
A. I cannot.
Q. Did you put it on in Mr. Jones' office?
A. I don't know when, nor where, nor under what circumstances.

Redirect by Mr. JONES:

180 Q. In your affidavit you state parenthetically, and Mr. Wiswall has asked you if you did not there state, that you went to Jenifer's house on O street at the time of the execution of this deed. You went to his residence?

A. I went to where he was in bed.

Q. And you don't know whether it was on O street or any other street?

A. I don't know what street it was on.

Q. And Jenifer at the time told you that he knew what it was about—knew all about it and understood it perfectly?

A. Yes, sir.

Q. Your witnessing the note was not put on until after he (Jenifer) had made his mark to it, was it?

A. Not until afterwards; no, sir.

Recross by Mr. WISWALL:

Q. Did you find Mr. Jenifer on that occasion on lot H, in square 367?

(Mr. JONES: Objected to as being already answered.)

A. I don't know where lot H is in square 367.

Q. Did you not swear in your affidavit that you found him there?

181 (Mr. JONES: Objected to, as the witness has already testified to that. He says he went to his residence, and that the part in parenthesis was put in by me by misinformation.)

Q. You swore to that affidavit?

(Mr. JONES: Objected to because the affidavit shows, and the witness may decline to answer these questions unless the affidavit is shown to *the* him.)

A. Yes, sir. I would not know where lot H, square 367, was. I have answered that as well as I can.

(Mr. WISWALL: ——. Affidavit handed to witness.)

WITNESS: I answered that before when I stated to you that Mr. Jones had added that part in parenthesis there, and I did not notice it when I swore to the affidavit.

Q. Is there not a paragraph in that affidavit that you have sworn to that states: "I found Jenifer when I took the acknowledgment of that deed of trust and witnessed the signature on the note on lot H, square 367?"

(Mr. JONES: Objected to, as the affidavit speaks for itself.)

Affidavit shown to witness, who says:

182 A. I don't think that is in affidavit. This affidavit says, "went to the residence of Thomas Jenifer, which was on O street, between Ninth and Tenth streets, and on lot H, square 367, for that purpose," and there is in parenthesis "which was on O street, between Ninth and Tenth streets, and on lot H, square 367."

Q. Is that all of your answer?

A. I did swear to that affidavit without noticing the part in parenthesis.

Q. And was that part in parenthesis in the affidavit when you signed it and swore to it?

A. That must have been unless put in since.

(Adjourned subject to notice.)

JAMES N. CALLAN.

Sworn to and subscribed before me this 1st day of February, 1883.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

183 SATURDAY, *February* 3, 1883—3 o'clock p. m.

Met pursuant to notice.

Owing to absence of solicitor for complainant-, adjourned until Monday next at 3 o'clock p. m.

JNO. CRUIKSHANK,
*Examiner.*

MONDAY, *February* 5, 1883—3 o'clock p. m.

Met pursuant to adjournment.

Owing to sickness in the family of Mr. Robert P. Dodge, one of the defendants, who was to have testified to-day, an adjournment is had without day.

JNO. CRUIKSHANK,
*Examiner.*

184 SATURDAY, *February* 17, 1883—11 -c'k a. m.

Met pursuant to agreement.

Present: Solicitors for respective —; also the examiner and stenographer and ROBERT P. DODGE, who, being produced as a witness of lawful age on behalf of the defendants, and being first duly sworn, deposes and says as follows:

Direct examination by Mr. JONES:

Q. Please state your name, age, occupation, and residence.

A. Robert P. Dodge; sixty-five years of age; assessor of the District; Georgetown, D. C.

Q. Did you know a man by the name of Thomas Jenifer?

A. No, sir.

Q. There is involved in this case a deed of trust purporting to have been made by Thomas Jenifer to yourself and Philip A. Darneille, on the 8th of July, 1875, and conveying lot H, in square 367,
to secure the payment of a note for one thousand dollars at
185 two years after date to the order of John G. Hall; will you state in your own way all you remember about it?

A. About the 4th of July, as well as I remember, Mr. Dudley came to our office, on the corner of 8th & F street-, and talked with Mr. Darneille, my partner, and he turned to me in another part of the room and said, Colonel, I think this will suit the Doctor's one

thousand dollars. I looked at the papers—the abstract of title, &c.—and examined them carefully and was satisfied myself, so far as I could see, that it was a proper loan. After the papers were all prepared, the deed of trust, &c., I took them over to Dr. Peter and got the check, I think; got the money at any rate from him. I went to the tax office and paid the taxes and paid over the remainder to Mr. Dudley. I was not able to see the party or anybody else, because at that time Mr. Darneille had been taken sick and gone off to the springs.

Q. State who you mean by the Doctor?

A. Dr. Armistead Peter.

186 Q. What relation, if any, was he to Mrs. Britannica W. Kennon?

A. Son-in-law.

Q. Whose money was it that was invested in this note?

A. Her money, as I understood.

Q. In what business were you then engaged?

A. Real estate broker.

Q. In what business was Mr. H. H. Dudley engaged?

A. In the same business.

Q. Do you know whose abstract of title was furnished?

A. William R. Woodward's.

Q. Please look at that and see if that was the tax bill you paid.

A. I judge that to be the tax bill; I am certain of it; there was a year's tax then due.

(Mr. JONES: I offered said tax bill here in evidence, and the same is herewith filed in evidence and marked Exhibit R. P. D. No. 1.)

WITNESS: That was the only bill unpaid, as well as I remember the abstract of title.

Q. Is that the note, Mr. Dodge, that was negotiated at the

187 time you have spoken of?

A. That looks to me to be the note; I don't know; in fact I know it to be so because here are my endorsements on the back in my handwriting.

(Mr. JONES: I file said note here in evidence, and the same is herewith filed in evidence and marked Exhibit R. P. D. No. 2.)

Q. Look at this paper (filed herewith in evidence and marked Exhibit R. P. D. No. 3) and state what it is.

A. That is a paper from George Peter.

Q. Who is the Peter that signs that paper?

A. Hon. George Peter, formerly Senator from Maryland.

Q. What relation is he to Mrs. Kennon?

A. Cousin.

Q. Any business relation?

A. And her attorney.

Q. You received that paper at or about its date?

A. Yes, sir.

Q. Upon the authority of that paper please state what you did.

A. We advertised and sold the property.

Q. To whom did you make sale at that time?

188 A. I think his name was Steward.

Q. State why you did not make a deed to Mr. Steward.

A. As well as I recollect, he wanted Mr. Peter to guarantee that he should have no court fees to pay, or something of that kind.

(Mr. WISWALL: I object to any talk between the witness and Mr. Steward as improper.)

Q. Did Steward comply with the terms of sale?

A. He wanted to do so, but did not.

Q. What prevented him?

A. He wanted a guarantee from us, as trustees, or from Mr. Peter, as attorney, that he would not be molested.

Q. What response did you make to that?

A. We were willing to make the deed whenever Mr. Peter directed us in writing to do so.

Q. Was that sale afterwards rescinded?

A. It was by returning him the money, as I understood, the one hundred dollars he had deposited. He demanded it, and I understood got it from Mr. Dowling, the auctioneer, by order of Mr. Peter.

189 Q. State, then, if you sold the property again.

A. We sold the property again—a second time to Mr. Cissell.

Q. Look at these two papers attached—look at the under one first—and state what they are.

A. That is the auctioneer's account of sales and your statement of the fund.

Q. That paper is correct, I suppose?

A. Yes, sir.

(Mr. JONES: I file said papers here in evidence, and the same are marked Exhibit R. P. D. No. 4.)

Q. Upon the proof being taken for the complainant, they produced and filed a paper, which I now show you, being Exhibit W. D. No. 2?

A. I signed that paper under a false impression. From statements made to me I believed the note and deed of trust, at that time, to have been forged, or a forgery.

Q. What did you think was forged?

A. The name of Thomas Jenifer on the original deed of trust and note.

Q. Who was it impressed you with the belief that it was a forgery?

190 A. Mr. Danenhower—probably C. M. Matthews, connected with him—Mr. Danenhower particularly. They brought me affidavits from the family of Jenifer and other matters to bear upon me, and, there being at that time (at the time this negotiation was made) several forgeries by colored people, I was led to believe that this was one of them. I subsequently made up my mind that it was not, upon other evidence being submitted to me.

Q. After you had ascertained, as you say, that it was not a forgery, did you then require or request this deed to be returned to you (Exhibit W. D. No. 2)?

A. That is my recolleetion, but I concluded that it was of no account, because Mr. Darneille had not signed it; he had refused to sign it.

(Paper here filed in evidence and marked Exhibit R. P. D. No. 5 and shown to the witness.)

Q. It seems that the deed of trust is marked at the record office as having been delivered to you. Do you know where it is?

A. I do not.

191 Q. Do you think you gave it to Mr. Matthews or Mr. Dannenhower?

A. I could not possibly remember; I have no recollection whatever about it; I have no recollect- of seeing the thing. Of course I must have got it. I know I got it from that paper (Exhibit R. P. D. No. 5). What has become of it or where it is I do not know any more than "the man in the moon;" don't know why I got it at that time; no reason why I should have had it out at that time any more than at the time the trust was first made. I really thought Mr. Cissell had it.

(Mr. JONES: No; he never had it.)

WITNESS: Mr. Darneille says he has not got it. I have been under the impression all along that it was in the hands of Mrs. Kennon.

Q. Did either a man named Brooks or a man named Stewart, colored people, have anything to do with this transaction at the outset?

A. None in the world that I know of. They may have had something to do with it with Mr. Dudley; never with us.

192 Q. Do you know that they had anything to do with it with Mr. Dudley?

A. No, sir.

Cross-examination by Mr. WISWALL:

Q. Were you defendant in equity cause No. 5832, Saunders *vs.* Dodge & Darneille?

(Mr. JONES: Objected to as immaterial and irrelevant to this issue.)

A. I remember a case of that kind.

Q. Did you cash the note mentioned in that case for Mr. Dudley?

(Mr. JONES: Same objection.)

A. I think our firm did.

Q. Do you know what the decision of the court was in that case?

(Mr. JONES: Same objection.)

A. I don't remember exactly.

Q. Did not the court decide that note to be a forgery?

(Mr. JONES: Same objection.)

A. I think some party presented herself (what was the first name—

Catherine?) some colored woman made her appearance in the court and swore that she had never made the note.

193 Q. Did they not decide that note and deed to be a forgery?

(Mr. JONES: Same objection.)

A. I think they did.

Q. Was the note in that case dated about a month after this note?

(Mr. JONES: Same objection.)

A. I could not tell you the date.

Q. What is your recollection?

(Mr. JONES: Same objection.)

A. Somewhere subsequent to that, I believe.

Q. A month or two?

(Mr. JONES: Same objection.)

A. I could not tell you.

Q. When did you last have the deed of trust in this case?

A. I don't remember.

Q. About the time you last had it?

A. I don't remember at all.

Q. Remember any one time when you had it?

A. No, sir; don't remember seeing it at all, except when first presented. I presume that if I took it out I handed it to whoever wanted it.

Q. Have you a particle of knowledge or belief that Thomas Jenifer received a dollar of this money that you paid to Mr. Dudley?

194 A. I could not possibly tell; I never saw the man.

Q. When was your attention first called to this note and deed of trust after you cashed the note?

A. I think when Mr. Peter wanted his yearly interest.

Q. When the interest became due?

A. I think so.

Q. Did you make any examination to ascertain the genuineness of that note and deed of trust?

A. I don't remember now, except that our firm were assured by somebody (who it was I don't know) that it was a forgery.

Q. Then on the first examination you made of the character of that note and deed of trust some one told you they were forgeries?

A. Yes, sir.

Q. Was that about the time the first interest became due?

A. May have been later; about that time; I could not tell you; Dr. Peter was not very particular in getting the interest on the money.

195 Q. Was your attention again called to the character of the note when the interest became due the second time—that would be July 8th, 1876?

A. I am pretty certain he did not ask for the interest until a year after it was due.

Q. Did you make an investigation of the character of the note and deed of trust when the principal became due, July 8th, 1877?

A. I think the matter dropped entirely at that time.

Q. Did you ever, or did Mr. Darneille to your knowledge, tell Mrs. Kennon that if she waited two years she should have all her money?

A. I have no recollection of it; in fact I don't think I ever saw Mrs. Kennon in the matter at all.

Q. Did you ever consult Mr. Callan, the notary, as to the genuineness of the note and deed of trust?

A. I did not until long afterwards; I don't know when; I think probably or pos-ibly after we realized——

(Mr. WISWALL: Just what I was going to ask you. You (addressing stenographer) may take that down because I was going to ask that.)

196 Q. Did you ever call on Jenifer in relation to this note and deed of trust?

A. I did not. I heard he was dead.

Q. When did you hear that he died?

A. I heard he was dead about the time that Dr. Peter wanted his money.

(Mr. WISWALL: I don't know when Dr. Peter wanted his money; he was probably wanting it all the time.)

Q. Did you call on Mr. Jenifer when the interest first became due?

A. I did not. I told you I never saw nor knew Jenifer.

Q. Did you ever call on him?

A. I told you I did not know and never saw the man.

Q. Can you state any reason why you did not call on Jenifer in regard to this note and deed of trust after you heard they were forgeries?

A. I cannot; possibly because Mr. Darneille was attending to it at that time.

Q. Did you call on A. M. Dutcher, one of the complainants in this case, in regard to the genuineness of the note and deed of trust?

197 A. Never saw the man in my life; didn't know there was such a man.

Q. When you made the release in this case, had you yourself made an examination of the character of this note and deed of trust as to their genuineness or not; were you satisfied in your own mind when you executed that deed of release?

A. I explained before, from assurances given to me, affidavits presented connected with the forgeries, at the time, that this was a forgery. That was the reason I was willing to make the release; just as well satisfied as if I had seen it done.

Q. Did Mrs. Kennon, in writing, direct you to release?

A. Mrs. Kennon, I have remarked before, I don't remember of seeing or hearing from in the case before. Dr. Peter or George Peter represented her.

Q. Did Dr. Peter, or either of the Peters, direct you in writing to release the property?

A. No, sir.

Q. Did they ever direct you verbally to release the property?

A. They did not.

198 Q. Did you then release it without consulting them?

A. I released it from the affidavits presented to me, that it was a forgery, and from the statement of Dr. Peter, that he was so well satisfied of it that he was was willing to pay Mrs. Kennon the money himself.

Q. Is this Dr. Peter the one who appeared as her attorney and was empowered to act for her?

A. Dr. Peter was the doctor and George Peter was the lawyer.

Q. Peter, the lawyer, acted as her counsel and acted with you in the matter?

A. Not as to the release. No, he did not appear in the case until after he ordered the advertising.

Q. Then Peter, the lawyer, did intervene in the case?

A. Yes, sir.

Q. Did you know the payee of this note, John F. Hall?

A. I never saw nor heard of him.

Q. How did you know that was his signature on the back of it?

A. I don't pretend to know everybody's signature.

199 Q. Did Dudley tell you it was his signature?

A. Mr. Dudley presented the case, like any other broker would present a case, and got the money.

Q. How much money did you pay Dudley?

A. I don't remember; all that was coming to him after the expenses, taxes, commissions, and I think the fee to Woodward.

Q. Did you ever see any affidavit made by Callan as to where he found Jenifer when he took the acknowledgment?

(Mr. JONES: Objected to.)

A. No, sir; I do not remember.

Q. Did he tell you in what house and on what street he found Jenifer when Jenifer executed the note and deed of trust?

A. I do not remember.

Q. Did you ever ask him?

A. I do not remember that even.

(Mr. JONES: All conversations between the witness and Callan objected to.)

Q. Did you change your mind in regard to the character of the note and deed of trust from statements made to you by Callan?

A. Principally so.

200 Q. Did Callan show you any statement made in writing as to what he would swear to in the trial of this case?

A. I don't remember now.

Q. Did Callan tell you that a man by the name of Hall took him in a carriage to a house and street at the time he went out and took the acknowledgment of this deed of trust?

(Mr. JONES: All conversations between the witness and Callan objected to.)

A. I do not remember.

Q. What did Callan tell you in regard to the character of this note and deed of trust?

A. That he was present; knew Jenifer, and had known him for many years, and witnessed his signature.

Q. He didn't tell you the house and street where he found Jenifer?

A. Not that I remember just the facts in the case.

Q. This conversation with Callan was after the deed of release was made by you?

A. Yes, sir.

Q. Did you ever request Dannenhower or any one else to
201 return and cancel this deed of release?

A. As I remarked before, I don't remember whether I did positively, knowing that my cotrustee had refused to sign it.

Q. Did Mrs. Kennon or either of the Peters request you to recall that deed of release?

A. No, sir; not that I remember. They looked upon it in the same light.

Q. Have you made a careful search for the deed of trust?

A. Don't know where to look. I thought Mr. Cissell had it, and so wrote on the back of that paper, and was about to send it to him, when I saw Mr. Darneille at the office, and he told me it was not worth while to send that to him, because he hadn't it.

Q. When you advertised and sold this property to Steward who directed you to advertise and sell it?

A. There is the direction (referring to Exhibit R. P. D. No. 3).

(Mr. WISWALL: That is when you sold to Cissell?

Mr. JONES: No, sir; that is to Steward, in 1881, you remember.)

Q. Then you had only one direction for both sales?

202 A. Mr. Darneille brought the other to me, but I don't know where it is.

Q. Who directed you to sell when you sold to Steward?

A. That is the direction (referring to Exhibit R. P. D. No. 3).

Q. Then who directed you to advertise and sell when you sold to Cissell?

A. The paper was brought to me, I think, by Mr. Darneille from whoever it was that directed the sale; I don't remember.

Q. You had one paper and Mr. Darneille had the other?

A. He kept both. I have never seen them since 1881 that I know of.

Q. Then you don't know who directed you to sell to Cissell?

A. No.

(Mr. JONES: There was no second direction; didn't need any.

WITNESS: All I remember just now about it.

Mr. JONES: Do you recollect any second direction?

WITNESS: Strikes me there was a second direction, but I do not know or remember who made it or where it is. Mr. Darneille may have the paper.)

203 Q. Can you tell the first time that you spoke to Mr. Callan, the notary, in regard to the genuineness of this note and deed of trust?

A. No, sir; I cannot remember.

Q. Remember the second time?

A. No, sir; can't remember any time.

Q. Can you remember the last time?

A. If I can't remember any time I can't remember the first nor the last.

Q. Was it before you sold to Steward that you talked with Callan?

A. I think my answer is sufficient.

Q. Was it between the time you sold to Steward and the time you sold to Cissell?

A. Can't remember.

Q. What is your best recollection?

A. Can't remember the time at all.

Q. What was done with the money that you realized from the sale to Cissell?

A. The note was presented as cancelled. There it is (referring to Exhibit R. P. D. No. —). This note was presented for cancellation, or at least there were the endorsements on the back of cancellation. The money was not presented to me at all.

204 Q. No money paid to you?

A. No, sir.

Q. Paid to Mr. Darneille?

A. I don't know who it was paid to; I know this note was presented.

(Mr. JONES: Whose writing is that on there?
WITNESS: My writing.)

Q. Is that the way you do business—put endorsements on the back without knowing whether it is paid or not; do you know of your own knowledge that this whole amount here was paid by Mr. Cissell?

A. I do not remember about it at all; when a man brings me a note cancelled or to make endorsement on the back as to how much cancelled I am sure to do so.

Q. What I asked you was if you know of your own knowledge that Cissell ever paid a dollar?

A. I don't know anything about that; I never saw a dollar of it paid.

Q. Do you know of your own knowledge that Mrs. Kennon ever got a dollar of it or not?

A. I don't remember anything at all about who got the money.

205 Q. Who brought that note to you to put that endorsement on there?

A. I could not tell you.

Q. Do you know whose handwriting that is on there?

A. I do in peace! That is my handwriting (referring to endorsement on the back of Exhibit R. P. D. No. —).

Q. You can't tell who brought that note to you to put that endorsement on there?

A. I presume the notary did when the deed was made to Cissell.
Q. Did Darneille bring it to you?
A. I think it likely.
Q. Might not the money have been paid to Darneille?
A. I don't know anything about it; might have been; I don't know.
Q. You say you don't know that Mrs. Kennon ever received a dollar. Have you conversed with her on the subject?
A. I never had one word of conversation with her upon the subject one way or the other.

(Mr. WISWALL: It is no use to ask you any more questions.)

206 Q. Can you give any intelligent explanation why this note and deed of trust were allowed to stand for more than six years before any attempt was made to make the money out of the property?
A. I cannot tell you.

(Mr. JONES: You were not the holder of the note?
WITNESS: No; I was not interested in it.)

Q. Were you quite often during the interval of five or six years spoken to about making the money out of this property?
A. No.
Q. You had the abstract of title to the property?

(Mr. JONES: Objected to.)

A. No, sir; I gave it to Dr. Peter with the note.
Q. Did you ever converse with Mr. Dudley about the genuineness of this note and deed of trust?

Mr. JONES: Objected to.)

A. No, sir; not that I remember.
Q. Did you know of your own knowledge that the office of H. H. Dudley that you speak of and that of Mr. Callan, the notary, were in the same room?

(Mr. JONES: Objected to.)

A. I did not know.

Redirect by Mr. JONES:

207 Q. When did you first hear from anybody that this particular deed of trust and note were probably forgeries?
A. As well as I remember, about the time when Dr. Peter called for the interest.
Q. Now, do you know of his calling for the interest at all?
A. I think so; my mind is *is* very much wandering about this whole thing, because of the effect that it was considered a forgery about that time.
Q. Did you ever hear of this thing being a forgery until about the time you were called upon to execute this release?
A. I heard before that time.
Q. How long before?

A. I could not tell you, because I am uncertain as to what time Dr. Peter wanted the interest.

Q. Do you know who it was — said it was a forgery before that time?

A. I do not; I think it was all connected with the forgeries that were made about that time by Brookes and Stewart, two negroes.

Q. There was no attempt, however, made to convince you that it was a forgery until about the time of this release, was there?

208 A. I cannot tell you; I can't remember so far back about those things.

Q. Do you remember that it was told to you that it was a forgery before Jenifer's death, when you first heard of Jenifer's death?

A. I do not remember.

Q. Do you remember when you first heard of Jenifer's death?

A. I do not.

Q. In regard to the second direction to sell, are you sure there was any second direction given to sell, in writing?

A. I think there was.

Q. I asked if you were sure?

A. I don't think I would have been party to making sale unless there was.

Q. That is the only reason why you think there was a second direction?

A. That is the main reason why I think so. Mr. Darneille will remember more than I can possibly tell about it. I was busy about other matters, and having a cotrustee, I supposed he would look after it.

209 Q. After you signed that deed of release, however, did you make sufficient inquiries as to satisfy you that it was not a forgery?

A. I found that out after I signed the release, and before we were directed to make the second sale.

Q. No proof, however, was ever made to you that it was a forgery, was there?

A. Nobody undertook to prove that it was a forgery.

Recross by Mr. WISWALL:

Q. Do you remember that you co-versed with any person other than (Nick) Callan?

STENOGRAPHER: It is Nick now, is it?

Mr. WISWALL: Yes, Nick—old Nick.

EXAMINER: His name is not Nick; the name of his father was Nicholas Callan.

Mr. WISWALL: No, I know it is Nick; I think I know Nick Callan; between the two sales in regard to the genuineness of this note and deed of trust, do you remember?

A. I do not remember conversing with anybody else except this young Callan; I do not know his first name—the notary in the case.

(Adjourned until notice.)

210–211 MONDAY, *March* 12, 1883.

Met pursuant to notice.

Owing to the absence of the witness, James N. Callan, adjourned to to-morrow, Tuesday, in order to procure his attendance.

JNO. CRUIKSHANK,
*Examiner.*

TUESDAY, *March* 13, 1883.

Met pursuant to notice.

The witness, James N. Callan, not having appeared, adjourned to Wednesday.

JNO. CRUIKSHANK,
*Examiner.*

WEDNESDAY, *March* 14, 1883.

Met and adjourned until the witness Callan should be produced.

JNO. CRUIKSHANK,
*Examiner.*

212 FRIDAY, *March* 16, 1883.—3 o'c'k p. m.

Met pursuant to adjournment.

Present: Solicitors for respective parties; also the examiner, and James N. Callan recalled.

Direct examination by Mr. JONES:

Q. Look at this deed of trust, about which you were examined before, and which has been found among the papers of Mr. Dodge, and tell us what you know about it.

(Said deed of trust shown the witness, and filed herewith in evidence and marked Exhibit J. N. C. No. —.)

A. This paper is the one referred to in my previous testimony as the deed of trust acknowledged before me by Thomas Jenifer on the 8th day of July, 1875; I identify it by the fact that on the first line the word "eighth" is in my handwriting; on the seventh line of the first page "R. P. Dodge and P. A." are in my handwriting; on the last page "Thomas Jenifer," his mark, are in my handwriting;
113 also the three signatures of James N. Callan; and that is my notarial seal.

Q. Is that the paper that Thomas Jenifer executed and acknowledged before you, as referred to in your preceding testimony?

A. Yes; that is the paper, sir.

Cross-examination by Mr. WISWALL:

Q. Will you now swear positively that all your story about Jenifer making his mark to this paper is not an entire fabrication?

A. I have not told any story; I told the facts.

Q. I repeat the question. Will you now swear positively that all the facts that you have related about Jenifer making his mark to this paper is not an entire fabrication?

A. Not to my knowledge.

Q. Then can you give any sensible reason why you are enabled to recall so many other circumstances with such particularity, and yet cannot tell the house, nor the number, nor the street where Jenifer made his mark to this paper?

214 (Mr. JONES: Question objected to because that matter has been gone into before.)

A. I can only say that it was my business to see that the paper was executed properly, and not my business to know where Mr. Jenifer lived, I having gone there in a carriage with other parties.

Q. Did you tell John H. Steward at any time after he bid off the property at auction and withdrew his deposit that you found Jenifer at Dutch's house, on Samson street, and that you held Jenifer up in your arms in the bed when he made his mark?

A. I never told John H. Steward where I found Jenifer, nor that I held him up when he made his mark.

Q. In your memorandum to Mr. Jones to draw your affidavit, did you say one word about Hall taking you to Jenifer, or the house, or the street, or the lot where he made his mark?

(Mr. JONES: Objected to because it is not proper cross-examination of the testimony being taken to-day. The witnesss was thoroughly examined and cross-examined, and has now been recalled
215 only as to a certain instrument, and all cross-examination except upon that he has given to-day in chief is objected to.)

A. I don't now recollect what the memorandum was.

Q. Did you not think it quite as material to the defence that you should state the facts mentioned in the foregoing question as to parade with such particularity the delight Jenifer experienced when he realized that he was honored with a call by the nephew of his uncle, his old and esteemed friend?

(Mr JONES: Objected to as nonsense.)

A. I am not one of the defendants in this case and have no interest in it.

Q. How came you to make that affidavit at all, and did you read it over before signing it; and did you know Jenifer when he was living on his O-street property?

(Mr. JONES: Question objected to because it is multifarious.)

A. I think I have known Jenifer for thirty-five years, as I have already stated. The affidavit was made in my own defence,
216 having been attacked by the bill of complaint in this case. I have no recollection of reading it over.

Q. Was not your recollection of the fact that your name, as notary public, was appended to this and all the circumstances connected with it often refreshed from the time the first interest became due, January 11, 1876, all along from time to time during the next seven years—that is, from January 11, 1876, to *from* January 11, 1883; and was not your attention particularly called to this case during the

pendency of equity cause No. 5832, of Saunders *vs.* Darneille, filed October 12, 1877, and decided September 13, 1878?

(Mr. JONES: Objected to for the same reason.)

A. I have no recollection of my attention ever being called to this case more than once previous to the sale to John H. Steward.

Q. Did you say one word to either Peter or the defendants, Mrs. Kennon, Dodge, Darneille, Cissell, Steward, or Mr. Jones, or anybody else, about one Hall taking you to Jenifer's for his mark?

A. I think I spoke to Mr Peter once about my knowing Mr. Jenifer. I have never seen nor spoken to Mrs. Kennon; I don't
217 know the lady. It is more than probable that I have conversed with Mr. Dodge, Mr. Darneille, and Mr. Jones. Mr. Cissell I don't know; and I think I have spoken to Mr. Steward.

Q. Can you tell why Mr. Jones left it out of your affidavit?

A. I know nothing with regard to Mr. Jones' business, except as I have testified to already.

Q. Now your recollection is refreshed by another inspection of this paper, and you have had time to think over the matter. Are you willing to swear positively that the words "Thomas Jenifer his mark," in both instances, or either of them, was written in Jenifer's presence, and that you wrote them; and did you know that Jenifer could neither read nor write before you went to his house?

A. The name of Thomas Jenifer in this deed is written in one place by me, as I testified a few minutes ago. I don't know when nor where it was written. I don't know whether I knew Jenifer could not read or write or not until I saw him make his mark.

Q. Where did you do your notary work from July 8, 1875, to August 14, 1875, and was H. H. Dudley's desk, August 14,
218 1875, in — room, 624 Louisiana avenue, and about twelve feet from yours?

A. I did my notarial business wherever required; I frequently used the desk of my brother in that office, 624 Louisiana avenue, with Gen'l Carrington and some others.

Q. Look at this paper (filed as an exhibit), your deposition, purporting to be taken before Examiner Cruikshank, in equity cause No. 5832, for the defendants, and state if that is your signature.

(Mr. JONES: Objected to as not pertinent or responsive to the examination-in-chief.)

A. (Examining deposition.) I think I can call this testimony to recollection. I knew these parties very well. I believe I testified in that case. Yes, I would pass that for my signature.

Q. Did you swear, in giving that deposition, that your place of business was, in August 14, 1875, at 624 Louisiana avenue, and that your desk was about twelve feet from H. H. Dudley's?

(Mr. JONES: Objected to, because the deposition speaks for itself. You cannot make him repeat all that deposition here. I object to his repeating here anything in that deposition.)

219 A I don't recollect what I swore to at that time.

Q. Did you ever see H. H. Dudley write?

(Mr. JONES: Objected to.)

A. I don't recollect whether I ever did or not.

Q. Look at that signature of Dudley's to his deposition shown you in the same case, and state if that is his signature.

(Mr. JONES: Objected to as not material or relevant to this case, and because the witness has not shown himself to be familiar with Dudley's signature.)

A. I am not an expert in handwriting. I don't know whether it is his signature or not.

Q. Give us your best belief in the matter.

A. I can't say; I am not an expert. If I did know it and if I was an expert I would not be able now to tell.

(Examiner CRUIKSHANK: I have certified to that signature and I do not desire to have testimony taken impeaching it.)

Mr. WISWALL: Mr. Jones, will you please let me see the note?

Mr. Jones hands note to Mr. Wiswall.

220 Q. Will you swear positively that H. H. Dudley did not write on the back of this note "Jno. T. Hall?"

A. I knew nothing of the endorsement on the note at all.

Q. Did you see H. H. Dudley write Jno. T. Hall on the back of this note?

A. No, sir; I did not.

Q. Didn't Charles Stewart give Dudley a memorandum of this lot and square and name of Jenifer, and did not Dudley thereupon there draw these papers and give them to you to do your writing on them in your office?

A. I didn't see Mr. Charles Stewart in connection with the case, and didn't know Mr. Dudley in connection with the case.

Q. Did you see Charles Stewart in your office on July 8, 1875, or soon thereafter?

A. I did not have any office in July, 1875.

Examiner takes said promissory note, which is lying at his elbow, and hands it back to Mr. Jones.

Mr. WISWALL: I am not through with that note.

Mr. JONES: Well, you have had it long enough to be through with it, and you have got through asking the witness about it.

221 Mr. Wiswall, solicitor for complainant-, calls for the production of the said note.

Mr. Jones, solicitor for the defendants, declines to produce the note again on the ground that the examination has been complete and thorough in regard to it, and requests the solicitor for the complainant- to go on and finish his cross-examination of this witness.

Q. Then what you swore to in that deposition—I will turn to it, so there shall not be any mistake about the language—look at that same deposition of yours in equity cause No. 5832 and see if you did not use this language: "Their first business was with Mr. Dud-

ley, whose desk was next to mine," and did you not say, in answer to the next question but one, "About twelve feet apart?"

(Mr. JONES: Objected to on the ground that the deposition speaks for itself.)

WITNESS: (Examining said deposition.) What was the time of that?

Mr. WISWALL: August, 1875.

A. (Witness throwing deposition aside.) I said July, not August. I never testified to having desk room there in July, 1875; I
222 had no office in July, 1875.

Q. Did you testify in that deposition—did you use this language: "I don't recollect; their first business was with Mr. Dudley, whose desk was next to mine?"

A. If I did it is a matter of record in the court-house and can be referred to.

Q. Did you also use this language, "About twelve feet apart?"

A. I have no recollection. The depositions will speak for itself. You can't falsify the records here by having me testify now.

Q. I show you a deed filed as an exhibit in equity cause No. 5832; state if your name appears there three times.

A. My signature appears there twice, as witness and notary both.

Q. Don't it appear three times?

A. My name appears in the body of the acknowledgement and that is my writing.

Q. Did Jenifer make his mark to the deed or to the note first?

A. I have no recollection which first.

Q. Who paid you for your services on that occasion in the present case?

A. I don't recollect.

Q. When and where did you fill up that acknowledgment?
223 A. I can't tell you, for it is not filled up by me.

Q. When did you impress your seal on this acknowledgment?

A. That I don't recollect.

Q. Nor where?

A. No.

Q. When did you write James N. Callan?

A. I can't tell you; I don't recollect anything connected with the signatures; I know they are mine.

Q. When did you write "witness, James N. Callan?"

A. I can't tell you when nor where.

Q. Do you swear positively that the word- "Thomas Jenifer, his mark," is in your handwriting?

A. Yes, sir. You must remember that I wrote that without any desk to write on and I didn't write so well.

Q. Did you write Thomas Jenifer, his mark, at the bedside of Jenifer?

A. I don't recollect.

Q. State particularly what writing you did at Jenifer- and what part you did after being there on this deed in this case?

224 A. I don't recollect what I did there nor what writing I did when I came back nor what writing I did in any place.

Q. State if you wrote Thomas Jenifer, his mark, on this paper with the same pen and ink that you wrote James N. Callan, signed, sealed, and delivered in the presence of.

A. That I don't know.

Q. Was Mr. Hall present when you wrote "Thomas Jenifer, his mark?"

A. I have already testified he was present.

Mr. WISWALL: I won't ask you any more questions.

Mr. WISWALL: Mr. Jones, will you let me see the note mentioned in this case, in order that I may ask Mr. Callan some questions in regard to the signature of John T. Hall?

Mr. JONES: I will not, because you have gone over the matter so many times that I think you have got enough.

JAMES N. CALLAN.

Sworn to and subscribed before me this 16th day of March, 1883.

JNO. CRUIKSHANK,
*Examiner in Chancery.*

225 EXHIBIT R. P. D. No. 1. J. C., Ex.

Folio 380.

WASHINGTON CITY.

Thomas Jenifer to the District of Columbia, Dr.

*For Tax on Real Estate for the Year Ending June* 30, 1875.

Total tax, $3.00 per $100, assessed valuation.

| Square. | Lot. | Value of lot. | Value of impr's. | Total assessed value. | Amount of tax. |
|---|---|---|---|---|---|
| | | | | | $ *Cts.* |
| 367 | H | $2,048 | $400 | $2,448 | |

J. C., *E.*

| | |
|---|---|
| Total amount of tax | 73 44 |
| Less abatement of one per cent. per month to Nov. 1st, 1874 | 5 88 |
| Add penalty of one per cent., Nov. 1, 1874, and one per cent. on the first day of each succeeding month—advertising, 2 lines | 1 26 |
| | $80 58 |

Received payment.

[Collector's Seal. Paid Jun- 30, 1875.]

JOHN F. COOK, *Collector,*
By MERCHANT.

Jun- 30, 1875. Paid.

226 R. P. D. No. 2.

No. —. WASHINGTON, D. C., *July 8th*, 1875.

Two years after date I promise to pay to John T. Hall, or order, the sum of one thousand $\frac{}{100}$ dollars, for value received, with ten per cent. interest until paid, payable semi-annually.

$1,000.00.

his
THOMAS x JENIFER.
mark.

Witness:
JAS. N. CALLAN.

[Written on side:] Secured by deed of trust duly stamped.

[Endorsed:] (Reverse.) Exhibit No. 1. J. N. C.

| | |
|---|---|
| Note & interest | 1,689 16 |
| Net proceeds of sale of May 29, '82 | 1,412 59 |
| Deficit | $276 57 |

Exhibit R. P. D. No. 2.

JOHN T. HALL.

227 Ex. R. P. D. No. 3.

*Order of Geo. Peters to Sell.*

Messrs. Rob't P. Dodge & P. A. Darneille, trustees.

GENTLEMEN: As attorney for Mrs. B. W. Kennon, I hereby request you to advertise the property of Jenifer under the deed of trust made to secure a note for one thousand dollars, which note she holds.

July 6th, '81.

GEO. PETER.

228 EXHIBIT R. P. D. No. 4.

WASHINGTON, D. C., *May 31st*, 1882.

Lot H, Wilson & Collins' sub. in Sq. 367, in ac. with R. P. Dodge & P. A. Darneille, trustees, &c.

(Deed July 8th, 1875, liber 787, folio 439.)

Cr.

May 19, 1882.—By purchase-money (Sam'l S. Cissel, purchaser) $1,700 00

Dr.

| | |
|---|---|
| By trustees' commissions, 5 % | $85 00 |
| Voucher 1—By auct'r & adv't sale, July 20, 1881 (not consummated, thro' fault of Jenifer's representative) | 49 67 |

| | | | |
|---|---|---|---|
| By auct. & adv't sale, May 29th, 1882, auct. fee by agreement made at | $10 00 | 26 21 | |
| | 56 06 | 30 83 | |
| Voucher 2—By taxes due on property | 7 09 | | |
| | 63 15 | | |
| Int. | 32 55 | | |
| | | 95 70 | |
| | | | 287 41 |
| Nett amount for distribution | | | $1,412 59 |

*Distribution.*

| | | | |
|---|---|---|---|
| Debt—note of Thomas Jenifer, dated July 8th, 1875, at 2 y'rs, order of J. T. Hall | | | $1,000 |
| 6 y'rs 600<br>10 mo's 83 33⅓<br>21/30 of mo 5 83⅓ | Interest @ 10 % from date to May 29th, 1882, 6 y'rs, 10 mo's, 21 days | | 689 16⅔ |
| Total debt | | | $1,689 16⅔ |
| Apply above nett am't to same | | | 1,412 59 |
| Deficit | | | $276 57 |

For which estate of Thomas Jenifer is liable.

Above nett am't of $1,412.59 is credited upon the back of said note as of May 29th, 1882, day of sale.

229 *Newspaper Adv't of Sale.*

Thomas Dowling, auctioneer.

Trustees' sale of improved property on the south side of O street, between Ninth and Tenth streets, northwest.

By virtue of a deed of trust bearing date July 8th, 1875, and recorded in liber 787, folio 439, one of the land records for Washington county, District of Columbia, the undersigned trustees will sell, on Monday, May twenty-ninth, 1882, at half-past four o'clock p. m., in front of the premises, the following property: Lot H of Wilson & Callan's subdivision of square 367, having a front of 23 feet 9 inches by a depth of 115 feet to a 15-foot alley, together with the improvements.

Terms: One-third cash; residue in two equal payments at six and twelve months, with notes bearing interest at six per cent. per annum until paid, and secured by a deed of trust on the property sold. All conveyancing at purchaser's cost. $100 deposited at the time of sale.

ROB'T P. DODGE,
P. A. DARNEILLE,
*Trustees.*

m16-dts

230 (*Voucher* 1.)

Book —, folio 286.

WASHINGTON, D. C., 29*th May*, 1882.

Account sales of real estate sold for account of Dodge & Darneille, trustees, by Thomas Dowling, general auctioneer, southwest cor. Pa. Ave. and 11th St.

Prompt attention given to the sale of real estate, bonds, stocks, works of art, libraries, furniture, horses, carriages, &c., &c.

Agreeable to the annexed advertisement the property therein described was sold to Mr. Samuel S. Cissell for $1,700.00.

Charges:

| | | |
|---|---|---|
| | To com's | 10 00 |
| | " Ev'g Star N. P. Co. | 16 21 |
| July 20th, 1881, | " charges in previous sale | 49 67 |
| | | $75 88 |

31st MAY, '82.

Settled.

THOMAS DOWLING.
SLOAN.

231 EXHIBIT R. P. D. No. 5.

*Recorder's Receipt for Deed of Trust.*

Return this when you call or send for your deed in one month from date.

Deed — trust. Thomas Jenifer to Dodge & Darneille.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS.

Received for record July 10th, 1875; fee paid, $2.

S. WOLF, *Recorder.*
GEO. F. SCHAYER, *Deputy.*

Delivered to R. P. Dodge, Feb'y 12, 1878.

[Endorsed:] Exhibit J. N. C. Exhibit R. P. D. No. 5.

232 *Deed of Trust.*

This indenture, made this eighth day of July, in the year of our Lord one thousand eight hundred and seventy-five, between Thomas Jenifer, of the city of Washington, District of Columbia, of the first part, and R. P. Dodge & P. A. Darneille, of the same place, of the second part,—:

Whereas the said Thomas Jenifer is justly indebted unto John T. Hall in the sum of one thousand (1,000) dollars, for which amount he holds the said Thomas Jenifer's note, bearing even date with these presents and payable two years after date, with interest at ten per

cent. per annum until paid, payable semi-annually; and whereas the said parties of the first part being desirous to secure the full and punctual payment of said note, and all interest, costs, and charges that may accrue thereon, according to the true intent and meaning of the same, hereby executes these presents: Now, therefore, this indenture witnesseth that the said part- of the first part, for and in consideration of the premises aforesaid, and, further, the sum of one dollar in lawful money of the United States to him in hand paid by the said part[ies] of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha- granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said parties of the second part, their heirs and assigns, all that certain piece or parcel of ground situate, lying, and being in the city of Washington, District of Columbia, and described as being all of lot lettered "H" of Wilson and Callan's subdivision of lots in squre numbered three hundred and sixty-
233 seven (367) as the same is recorded in the office of the surveyor of the city of Washington, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said party of the first part of, in, to, or out of the said described real estate and premises; to have and hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part, their heirs and assigns, in and upon the trusts, nevertheless, hereinafter mentioned and declared—that is, in trust to permit the said Thomas Jenifer, his heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for his and their sole use and benefit until default be made in the payment of said note or interest or any proper cost, charge, commission, half-commission, or expense in and about the same.

And upon the full payment of all of said note and the interest thereon and all other proper costs, charges, commissions, half-commissions, and expenses at any time before the sale hereinafter provided for release and reconvey the said described premises unto the said Thomas Jenifer, his heirs or assigns, [at] his or their cost.

And upon this further trust, that upon default being made in the payment of the said note or any instalment of interest or any proper cost, charge, commission, half-commission, or expense in and about the same, then and at any time thereafter to sell the said described real estate and premises at public auction upon such terms and conditions, and at such time and place, and after such previous public advertisement as the said parties of the second part, or the survivor or his heirs or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales first to pay all proper costs, charges, and expenses, and to retain as compensation a commission

of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Thomas Jenifer, his executors, administrators, and assigns.

And the said Thomas Jenifer does hereby agree at [his] own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due, and to keep the said improvements insured against fire in the name and to the satifaction of said parties of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any fault or neglect to so pay said taxes and assess-
234 ments or to so insure any party secured hereby may pay said taxes and assessments or may have said improvements insured, and the expense thereof shall be a charge hereby secured, and bear like interest as the matter secured.

In testimony whereof the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

his
THOMAS x JENIFER. [SEAL.]
mark.

No wife.

Signed, sealed, and delivered in the presence of—
JAMES N. CALLAN.

"Until paid" interlined [on] 1st page.

DISTRICT OF COLUMBIA, }
*County of Washington,* } ss:

I, James Nich's Callan, a notary public in and for the said county, in said District, do hereby certify that Thomas Jenifer, party to a certain deed bearing date on the eighth day of July, A. D. 1875, and hereto annexed, personally appeared before me in the county, the said Thomas Jenifer being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and my notarial seal this eighth day of July, A. D. 1875.

[NOTARIAL SEAL.] JAMES NICH'S CALLAN,
*Notary Public.*

235 [Endorsed:] (Copy.) Thomas Jenifer to Robert P. Dodge and P. A. Darneille. Received for record on the 10 day of July, A. D. 1875, at 11.30 o'clock a. m., and recorded in liber No. 787, folio 439, one of the land records for Washington county, in the District of Columbia, and examined by S. Wolf, recorder.

236 (Copy.)

In the Supreme Court of the District of Columbia, Holding a Special Term.

DISTRICT OF COLUMBIA, *Washington County.* } *To wit:*

The United States of America to all to whom these presents shall come, Greeting:

Know ye that the last will and testament of Thomas Jenifer, late of the District of Columbia, deceased, hath in due form of law been exhibited, proved, and recorded in the office of the register of wills for Washington county, aforesaid, a copy of which is to these presents annexed, and that administration of all the goods, chattels, and credits of the said Thomas Jenifer, deceased, is hereby granted and committed unto Anthony Dutch, the executor, by the said will appointed.

Witness Arthur MacArthur, Esquire, justice of the supreme court of the District of Columbia, this 27th day of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 102nd.

[Seal S. C. D. C.]

Test: A. WEBSTER
*Register of Wills.*

I do solemnly swear that I will well and truly admister the goods, chattels, and personal estate of Thomas Jenifer, late of Washington county, in the District of Columbia, deceased, to the best of my knowledge, according to law, and give a just account of my administration when thereto I shall be lawfully called. So help me God.

ANTHONY DUTCH.

Sworn and subscribed before me this 27th day of April, A. D. 1878.

Test: A. WEBSTER,
*Register of Wills.*

237 *Will of Thomas Jenifer.*

I, Thomas Jenifer, of the city of Washington, in the District of Columbia, being of sound and disposing mind & memory, do make, publish, and declare this to be my last will and testament, hereby revoking and making null and void all former last wills and testaments and writings in the nature of last wills and testaments by me heretofore made.

My will is:

First. That my funeral charges and just debts shall be paid by my executor, hereinafter named, and he may collect therefor the rents, profits, & income of my real estate, or any personal property I may leave may be used therefor.

Second. I order and direct that all the real estate I am seized and

possessed of at the time of my decease shall be kept & remain undisposed of & undivided and unencumbered for the term of two years from and after my decease.

Third. I give, devise, and bequeath to Anthony Dutch, of said Washington, his heirs and assigns, the sum of eleven hun-
238 dred dollars, to be paid to him by my executor, hereinafter named, in three years after my decease; to have and to hold the same to him, his heirs, executors, and administrators, to his & their use and behoof forever.

Fourth. All the residue of my estate & property not required for the foregoing debts, changes, & expenses & sum mentioned in paragraph No. 3 I give, devise, bequeath, and dispose of as follows: I give, devise, & bequeath to Henry Dutch, Harriett Nance, wife of Simon Nance; Maria Johnson, John Fletcher, Vincen Devol, & Kitty Harper, wife of William Harper; Becca Swales, & Maria Redics, share and share alike—that is, an equal share to each—of what remains of my property after paying my debts and sum of eleven hundred dollars to said Anthony Dutch, to be paid in two years after my decease by my executor hereinafter named; to have and to hold to them severally, & their heirs, executors, & administrators, to them & their use severally forever.

And I do appoint and nominate the said Anthony Dutch
239 to be the sole executor of this my last will and testament, and I order and direct said Anthony Dutch to collect the rents, profits, & income of my real estate and therefrom pay all taxes, insurance, & repairs on my real estate after my decease, and to pay any balance to Mary Dutch, her heirs & assigns.

In testimony whereof I, the said Thomas Jenifer, have hereunto subscribed my name and affixed my seal this first day of March, A. D. 1878.

his
THOMAS x JENIFER. [L. S.]
mark.

Witness:
H. T. WISWALL.

Signed, sealed, & declared by the said Thomas Jenifer to be his last will & testament in presence of us, who, at his request and in his presence, have subscribed our names as witnesses hereto, in the presence of each other—

The word "will" interlined before signing; also the words "to pay any balance to Mary Dutch, her heirs & assigns."

HENRY T. WISWALL.
WILLIAM HILL.
ELEAZER WADE.

240 Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

APRIL 27TH, 1878.

This day appeared Henry T. Wiswall, William Hill, and Eleazer Wade, the subscribing witnesses to the foregoing last will and testament of Thomas Jenifer, late of Washington county aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to *be* best of their apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator and in the presence of each other.

Test:

A. WEBSTER,
*Register of Wills.*

241 DISTRICT OF COLUMBIA, *Washington County.* } *To wit:*

OFFICE REGISTER OF WILLS.

I hereby certify that the foregoing is a true copy of the original will of Thomas Jenifer, deceased, and the probate thereto, filed and recorded in the office of register of wills for Washington county aforesaid, and also that the said will, after having been proven by the witnesses whose names appear in the foregoing probate, was, by order of the supreme court of the District of Columbia, duly admitted to probate and record on the 27th day of April, A. D. 1878.

Witness my hand and the seal of the supreme court of the District of Columbia this 29th day of April, 1878.

[SEAL.]

A. WEBSTER,
*Register of Wills.*

242 *Decree Dismissing Bill. Filed Apr.* 10, 1883.

In the Supreme Court of the District of Columbia.

ANTHONY M. DUTCH *et al.*
*vs.*
ROBERT P. DODGE *et al.* } No. 8243. Docket 22.

This cause coming on to be heard upon the pleadings and proofs *and* was argued by counsel, whereupon, after full consideration thereof, it is agreed by the court this tenth day of April, A. D. 1883, ordered, adjudged, and decreed that said bill of complaint be, and the same is hereby, dismissed with costs.

By the court:

MACARTHUR, *Justice.*

*Appeal to General Term.*

Supreme Court, District of Columbia.

DUTCH *et al.*
*vs.*
DODGE *et al.* } 8243. Eq.

Order-book.

Now come the plaintiffs and enter an appeal to the court in general term from the decree pronounced herein on the 10th day of April, 1883.

H. T. WISWALL,
*Solicitor for Plaintiffs.*

Appeal, as ordered, entered.
By the clerk.

243 Proceedings before the Supreme Court of the District of Columbia in General Term, commencing on the 4th Monday, 28th day, of January, 1884.

Present: Chief Justice Cartter and Justices MacArthur and James.

WEDNESDAY, *February* 20, 1884.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter and Justices Cox and James.

*Final Decree. Filed Feb.* 20, 1884.

ANTHONY M. DUTCH and Others
*against*
ROBERT P. DODGE and Others. } Eq. No. 8243.

This cause coming on to be heard on the pleadings, evidence, and exhibits, and on the appeal from the decree of the special term of the tenth day of April, 1883, after argument of counsel and due consideration thereof, it is this 20th day of February, 1884, ordered, adjudged, and decreed that the said decree of the tenth day of April, 1883, be, and the same is hereby, reversed and set aside; and it is further ordered, adjudged, and decreed that the pre-
244 tended deed of trust, dated July 8th, 1875, purporting to be executed by Thomas Jenifer to the defendants, Robert P. Dodge and Philip A. Darneille, and the pretended note, alleged to be secured by the said deed, be, and the same are hereby, declared to be fraudulent and void, and the deed of conveyance from the said Dodge and Darneille to the defendant, Sam'l S. Cissel, and the alleged sale to said Cissel of lot "H," in square No. 367, be, and the same are hereby, declared null and void.

And it is further ordered, adjudged, and decreed that this case be referred to the auditor to state an account of the mesne profits received by said Cissel since the date of said alleged sale, and of the taxes paid by him, and that upon the coming in of said auditor's report and the confirmation thereof the complainants have execu-

tion for the amount found to be due from said Cissel and the costs of the reference against said Cissel; and, upon the entry of
245 the satisfaction of said amount so found to be due, this bill be dismissed with costs.

By the court:

D. K. CARTTER,
*Chief Justice.*

And from this decree the defendants pray an appeal to the Supreme Court of the United States.

*Motion for Appeal. Filed Feb.* 20, 1884.

In the Supreme Court of the District of Columbia.

ANTHONY M. DUTCH *et al.*
*vs.*
ROB'T P. DODGE *et al.*
} No. 8243. Eq. Doc. 22.

And now comes the defendant, Samuel S. Cissel, by his solicitor, and prays allowance of an appeal to the Supreme Court of the United States from the decree passed in this cause on the 20th day of February, 1884, and in support of his said application refers to the annexed affidavits of George M. Barker, R. B. Detrick, Burr R. Tracy, and James P. Ryon touching the value of lot H in square 367.

T. A. LAMBERT,
*Sol'r for Defendant, Sam'l S. Cissel.*

246 *Aff't of Geo. M. Barker.*

WASHINGTON, D. C., *February 14th*, 1884.

I am a citizen of Washington city, District of Columbia, my place of business being No. 649 & 651 on New York Ave. I am now and have been for many years doing business at the above number and place. My business is that of furnishing builders with building material, and I am well acquainted with the value of real estate in this city. I have examined lot "H" in square No. 367, said lot fronting on "O" St. north, between 9th & 10th streets west, and do hereby value the same at one dollar per square foot.

GEORGE M. BARKER.

Subscribed and sworn to before me this 14th day of Feb'y, A. D. 1884.

[SEAL.] CHAS. S. SHREVE,
*Notary Public, D. C.*

*Aff't of R. B. Detrick.*

WASHINGTON, D. C., *Feb'y 14th*, 1884.

I am a citizen of Washington city, District of Columbia, and am well acquainted with the value of real estate on O St. north, between

9th and 10th Sts. west, as I have bought ground on O St.,
247 bet. 9- & 10- Sts. N. west, and built upon it and am now the owner of and residing on the property, my residence being No. 917 O St. Lot lettered or numbered "H" in square No. 367 fronts on "O" St., bet. 9- & 10-, and is nearly opposite to my residence, and I value the same at one dollar per square foot. I paid for my lot one dollar per square foot in the year 1879.

R. B. DETRICK.

Sworn to and subscribed before me this 14th day of February, A. D. 1884.

[SEAL.] A. S. TAYLOR,
*Notary Public.*

*Aff't of Burr R. Tracy.*

WASHINGTON, D. C., *February 15th*, 1884.

I am a citizen of Washington city, District of Columbia, and am of the firm of Ryon & Tracy, real estate brokers, doing business at No. 513 7th St. west. I am well acquainted with the value of real estate in this city, and I have examined lot "H" in square No. 367, situated on "O" St. north, between 9th & 10th streets west, and bounded on the east by a thirty (30) foot paved alley and on the north by a fifteen (15) foot alley, and I do hereby value said
248 lot at one dollar per square foot. The above-named lot fronts twenty-three feet nine inches (23.9) on "O" St. by one hundred and fifteen (115) feet deep, and *that* its value is consequently, in my estimation, two thousand seven hundred and thirty-one dollars and thirty-three and a third cents, $2,731.33⅓. This lot contains 2,731$\frac{4}{12}$ square feet of ground.

BURR R. TRACY.

Subscribed and sworn to before me this 15th day of February, A. D. 1884.

[SEAL.] JAS. P. RYON,
*Notary Public.*

*Supersidias Bond. Filed Mar.* 3, 1884.

In the Supreme Court of the District of Columbia, the First Day of March, 1884.

ANTHONY DUTCH *et al.*
*vs.*
ROBERT P. DODGE *et al.*
} No. 8243. In Error.

Know all men by these presents that we, Samuel S. Cissel, George W. Cissel, and John D. Newman, are bound unto the above-named Anthony Dutch, Otho Dutch, Thomas Dutch, Becca Swales,
249 William Harper, Kitty Harper, Henry Matthews, Kitty Matthews, Anthony Williams, Decia Williams, John Fletcher, Vincent Duval, Maria Johnson, Mary Redies, Hattie Redies, Bessie Redies, John H. Redicts, Simon Nance, and Hannah Nance in the

sum of one thousand dollars, to be paid to the said Anthony Dutch, Otho Dutch, Thomas Dutch, Becca Swales, William Harper, Kitty Harper, Henry Matthews, Kitty Matthews, Anthony Williams, Decia Williams, John Fletcher, Vincent Duval, Maria Johnson, Mary Redies, Bessie Redies, John H. Redies, Simon Nance, and Hannah Nance, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this first day of March, 1884.

Whereas the above-named Samuel S. Cissel has prosecuted his appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

250 Now, therefore, the condition of this obligation is, that if the above-named Samuel S. Cissel shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SAMUEL S. CISSEL.
GEORGE W. CISSEL.
JOHN D. NEWMAN.

Sealed and delivered in presence of—
JNO. H. DARNEILLE.

Approved March 3d, 1884.

D. K. CARTTER,
*Ch'f Just.*

AUTHENTICATION OF RECORD.

*Clerk's Certificate.*

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 20th day of October, 1884.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
*Assistant Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 437. Samuel S. Cissel, appellant, *vs.* Anthony M. Dutch *et al.* Filed 22d October, 1884.

125-171

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

SAMUEL S. CISSEL,
*Appellant,*

*vs.*

ANTHONY M. DUTCH *et al.*,
*Appellees.*

## Brief on Behalf of the Appellant.

T. A. LAMBERT,
*Counsel for Appellant.*

R. O. POLKINHORN, PRINTER.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

SAMUEL S. CISSEL,
*Appellant,*

*vs.*

ANTHONY M. DUTCH *et al.*,
*Appellees.*

## Brief on Behalf of the Appellant.

### STATEMENT.

This is an appeal from the decree of the Supreme Court of the District of Columbia, passed February 20th, 1884, reversing the decree at Special Term dismissing the bill of complaint.

(Record pp. 98, 99.)

The record developes the following facts:

On or about July 8th, 1875, Thomas Jenifer, late of the City of Washington, negotiated, through the then existing firm of Dodge & Darneille, real estate brokers in this city, a loan of $1,000—from Mrs. Britannia W. Kennon, a resident of Georgetown, in

evidence whereof he passed his promissory note, and to secure which he executed the deed of trust at p. 83, of the record. The payee of the note was one John T. Hall, whose name appears to have been used, according to a custom among brokers, founded upon convenience, and innocent enough, as a conduit of title to the actual lender.

On the 3d day of March, 1875, Thomas Jenifer died possessed only of the equity of redemption in Lot H, Sq. 367, described in the deed of trust, but without having paid any part of the debt secured thereby.

Sometime in the year 1880 the appellee, Anthony M. Dutch, secured the services of Washington Danenhower, a local real estate and note broker, to negotiate for him and his alleged co-devisees a loan of money upon the lot of ground in question. On being advised by Danenhower that it would be an essential pre-requisite to obtain a release of this trust, Dutch called upon Philip A. Darneille, one of the trustees and a defendant herein, with the request that he would execute such a release, alleging, as a reason therefor, that Jenifer had, in his lifetime, paid the debt in full but that the note had been mislaid or lost, and that Jenifer had casually omitted to call for a release. This request was followed immediately by a similar one from the broker, Danenhower. The trustee took time to consider, and having discovered that the note had never, in fact, been paid, and was yet in the hands of the lender, Mrs. Kennon, he peremptorily declined to release. Thereupon the appellee, evidently acting under the inspiration of his broker, Danenhower, assumed the position that the note and deed of trust had been forged, and that the

deceased, Jenifer, had been made the victim of a conspiracy to deprive him of his sole real estate possession.

When, therefore, the property was exposed to public sale in July, 1881, at the instance of the holder of the note, the appellees sought to intimidate purchasers and thwart the sale by causing public announcement to be made by their agent of the alleged forged nature of the deed. Nor did they desist from their efforts to rid themselves of the obnoxious trust after the lot had been knocked down to the highest bidder, one John Steward.

The real estate firm of Dodge & Darneille had long since been dissolved and the senior partner was now and had been for some years the Assessor of the District of Columbia. Finding that Dodge had no recollection of the loan, Danenhower, the appellees' broker, succeeded in impressing upon him a doubt of the genuineness of the deed of trust by ingeniously associating its authorship with the perpetrators of certain frauds and forgeries of a contemporaneous date. So far was he successful in operating upon the mind of Mr. Dodge in this direction, that the latter finally yielded to his persuasions and signed an instrument, which Danenhower had prepared and presented to him, releasing the deed of trust in question. Subsequent investigation, immediately following this act, satisfied Mr. Dodge that he had been imposed upon and that the deed of trust was no forgery, but the evidence and result of an honest transaction. He did not, thereupon, demand return of the release, because, as he says at p. 77 of the record :

"I concluded that it was of no account; because Mr. Darneille had not signed it; he had refused to sign it."

In the meantime, Steward, the purchaser, had become wearied and disheartened by the repeated misrepresentations of the appellees and their agent touching the character of the deed of trust and the sale thereunder and demanded either a guarantee from the trustees that he would not be molested in the possession of the property or a recission of the contract of purchase. The trustees, under the circumstances, deemed it best to exonerate him from compliance with the terms of sale and the deposit of purchase money was returned to him.

(Record, p. 76.)

Afterwards, upon the renewed instruction of Mrs. Kennon, the property was again advertised for sale and sold at public auction on the 29th of May, 1882, to the appellant, Samuel S. Cissel, and the terms of sale were duly complied with.

Thereafter, on the 31st day of July, 1882, the appellees saw fit to file this bill of complaint, wherein they allege that they are the only heirs at law and devisees of Thomas Jenifer, deceased; that the said Jenifer died, testate, and seized of the lot in question; that, on or about July 8th, 1875, somebody personating him made a note for $1,000—payable to the order of John T. Hall and executed the deed of trust securing the same which is recorded in book 787 page 439 of the District Land Records; that Jenifer never was indebted to Hall; that the note and deed of trust are forgeries and that they constitute a cloud upon the appellees' title to the lot in question.

Wherefore they pray for its recission and cancellation, etc.

The defendants Dodge and Darneille filed separate answers, under oath, wherein the *bona fide* character of the loan to Jenifer and the attendant transactions are clearly set forth; the successive sales are described; the temporary hesitancy and doubt in the mind of the defendant Robert P. Dodge relative to the *bona fides* of the note and trust when brought to his attention in 1880, five year after their respective making and execution, is explained and the results of his subsequent investigation and reassurance are detailed and all charges of fraud and covin clearly and specifically denied.

(Record pp. 6, 7, 8, 9.)

The sworn answer of the appellant at pp. 9 and 10 shows the purchase by him of the property in good faith at the sale in May, 1882, and his subsequent compliance in full with its terms.

Accompanying the answers is an affidavit from James N. Callan (pp. 12, 13), who was the Notary before whom Jenifer acknowledged the execution of the deed of trust. The affidavit is to the fact of the acknowledgment, and is unequivocal upon the point although its regularity, as a matter of pleading, cannot be insisted upon.

On the 28th of September, 1882, the appellees filed their application for leave to file an amended bill, (p. 13) ostensibly to make Mrs. Kennon a party defendant, but really, it would seem, to serve as an irregular vehicle for the introduction of five affidavits whose collective object appears to be confined to a denial of the truth of the parenthetical assertion

in Callan's affidavit that, when called upon to take Jenifer's acknowledgment of the trust deed, he went to his residence "(which was on O street, between 9th and 10th streets, on lot H, Sq. 367)," pp. 15–19.

The amended bill appears at page 20. Inasmuch as Mrs. Kennon is charged by the latter pleading with the ownership of the note, and with having made demand upon the trustees to sell in execution of the trust—all of which is undeniable—and with nothing more, she elected to suffer a decree *pro confesso* deeming that an answer would be matter of supererogation.

The cause having been referred to the examiner, testimony was taken on behalf of both parties, and the cause heard, first, in the Special Term. This having resulted in the dismissal of the bill (p. 98.) an appeal was taken to the General Term whose final decree, reversing that of the court below, is at page 99 of the record. Thereupon the appellant prayed an appeal to this Honorable Court, from the decree last mentioned.

## Assignment of Errors.

1. The court below erred in awarding consideration to the contents of the paper writing printed at page 96 of the record, in the absence of any proof whatever of the due execution of the will of Thomas Jenifer whereof said writing purports, in part, to be an exemplified copy.

2. The court erred in assuming, in the absence of proof, that the appellees are the heirs-at-law and devisees of the late Thomas Jenifer, and are entitled,

in either capacity, to institute and maintain these proceedings.

3. The court erred in finding the fact of fraud and forgery from the existence of transitory doubts in the minds of certain parties, connected with the loan and trusteeship, in the face of the direct testimony of such parties that those doubts, upon investigation, had long since been wholly satisfied and removed.

4. The court erred in finding from the hearsay, vague, inconsistent and contradictory evidence on the part of the appellees the existence of fraud in the negotiation of the loan and of forgery in the execution of the note and deed of trust by Jenifer in opposition to the direct testimony of the agents and trustees, through whom the loan was negotiated, and of the notary, by whom the acknowledgment of Jenifer was taken, to the present, actual and physical execution of the note and deed of trust.

5. The court erred in considering and giving effect to the testimony of the appellees, Anthony M. Dutch and his wife, Mary, touching the alleged vague and inconclusive conversation between the late Thomas Jenifer and certain unidentified persons, detailed at pages 41 and 50 of the record.

6. The court erred in admitting the testimony of the alleged executor, Anthony M. Dutch, as to the supposed statement of his alleged testator, Thomas Jenifer, respecting the latter's indebtedness and connection with the deed of trust in question.

7. The court erred in not allowing the defendant's demurrer to the testimony on behalf of the appellees. (p. 60.)

8. The court erred in reversing the decree at Special Term dismissing the bill of complaint.

**Argument.**

The record will be searched in vain for any proof of the alleged heirship of the appellees. Neither do they establish the allegation in their bill that they are the devisees of Thomas Jenifer. Both are fundamental to the maintenance of the suit, and the failure on the part of the appellees to make such proof must, in the absence of its concession in the answers, be regarded as fatal to their chances of recovery. Substantiation of their title, as heirs or as devisees or as both, to Lot H in Square 367, was essential to their right to remove the alleged cloud upon such title created by the deed of trust from Jenifer to the defendants Dodge and Darneille. The record exhibits no pretense of proof that the appellees are the heirs of Thomas Jenifer. At page 96 appears what purports to be an exemplified copy of the probate of the will of Thomas Jenifer and of the contents of the will itself. The document was interjected, by counsel for the complainants, in the process of Dutch's direct examination, but is wholly irresponsive to any matter treated of by the witness, and is unconnected with any statement made by him in the course of his testimony. It stands, therefore, upon the record an unidentified and isolated element of inconsequent proof. If introduced for the purpose of proving title in the complainants through the last will and testament of their alleged testator, Thomas Jenifer, it was clearly incompetent. The established practice in this jurisdiction does not admit of proof, by

secondary evidence, of the contents of the will. The instrument itself, when relied upon as a muniment of title, must be produced and its execution duly proven, as in the case of an original conveyance of land.

It is axiomatic that fraud is never to be presumed in the absence of facts which necessarily import it.

*Gregg* vs. *Sayer*, 8 Pet., 244.

It is, for this reason, a fundamental rule of equity pleading that the bill must be specific in stating facts showing fraud.

*Moore* vs. *Greene*, 19 How., 69.

The allegations in the bill of fraud and forgery are specifically denied upon oath. The burden was, therefore, upon the complainants to prove the truth of their several charges. Have they done so? It is submitted that the record supplies an emphatic negative.

Of the testimony on behalf of the complainants, that of the witness Washington Danenhower is entitled to be considered first, not alone because of its priority in point of time, but because the witness himself exhibited, throughout, a degree of zeal and alacrity which readily stamps him as the governing spirit of the complainants' case and the instigator of these proceedings.

Danenhower was wholly unacquainted with Jenifer, and consequently had no personal knowledge of his business dealings. His acquaintance with the appellees began in 1880, when he was called upon by Anthony M. Dutch to negotiate a loan upon the property in question. This commission he readily

undertook, and, in its prosecution, discovered the existence of the deed of trust which it is now sought to avoid. His testimony is directed exclusively to the narration of alleged conversations between himself and the defendants. Dodge and Darneille, respectively, both of whom he called upon in their capacity of trustees under the deed of trust. If we are to credit the statement made by him on direct examination touching his first interview with Mr. Darneille, we must suppose that that gentleman was either a willing accessory to the fraud alleged to have been perpetrated upon Jenifer, or that he was grossly lacking in discretion.

It is impossible to reconcile the alleged ready admission by him of forgery in the deed of trust and fraud in the negotiation of the loan with the first elements of common sense. (Pages 28 and 29 of the record.) This, however, was the facile statement of a witness intent, in the first place, on securing his commission upon the projected loan and influenced, in the second, by an unexplained but clearly exhibited animosity to the defendant Darneille. The improbability, as well as the inconsistency of this statement is abundantly exhibited by the cross-examination of the witness at pages 30, 31, 32, 33, 34, 35, 36, 37 of the record. Ex. gr: in the direct examination at page 28 he says: "I did call on Mr. Dodge and Mr. Darneille also. I saw Mr. Darneille first at his office, where I told him about my business, which was to procure a release of this trust as I had been informed that it was a forgery—a fraud, rather. Mr. Darneille said he believed it was a forgery and a fraud; that he had had his attention called to the matter before; that they had tried to collect the money but could not, but

he said. We can release this property under the circumstances if we are paid for it." At page 31, he is asked on cross-examination:

Q. "Was it at the first or second interview that you told Darneille that it was a forgery?"
A. "I do not recollect of informing him about any forgery."
Q. "Then you never told Mr. Darneille that it was a forgery?"
A. "I did tell him it was a forgery afterwards, but do not know whether it was at the first or second interview."

The premeditated and extremely doubtful character of the witness' testimony on direct examination is well exemplified by his shuffling and equivocal response to the 47th question on cross-examination at page 34. The true nature of his mission to Darneille, relative to the deed of trust and the real nature of the sentiments inspired in him by its discovery, are truthfully exhibited in his reply to the 11th question on cross-examination at page 31.

Again, his replies to the interrogatories numbered from 51 to 58, on cross-examination, exhibit, conclusively, the fact that the charge of forgery, in connection with the deed of trust, and of fraud, in relation to the loan, was wholly an after-thought, and that the original negotiations for the release proceeded upon the concession that the trust was a valid one and that the loan had been actually negotiated by Jenifer in his life-time. It is to be remarked that Danenhower, at page 30 and in answer to the 4th cross-interrogatory, declares that the appellee Anthony M. Dutch accompanied him on one of the occasions of his visit to Darneille's

office and, in replies to subsequent interrogatories, he undertakes to give the substance of Dutch's language at that interview.

When the complainant Dutch took the stand, (which he did immediately after the witness Danenhower), he was asked this question on cross-examination at page 44:

Q. "You heard Mr. Danenhower testify yesterday that you went with him to see Mr. Darneille. Did not he tell the truth?"

A. "I was not with him."

* * * * * *

Q. "Then you never were with Mr. Danenhower at Mr. Darneille's office."

A. "No, sir; I was not. I told him so to-day, too.

This witness undertook to say that he had been entrusted with the management of Jenifer's property from about 1874 until the time of Jenifer's death, and that he had paid the taxes upon the lot in question from and including 1874 up to the present time, excepting, however, the tax for the year 1875, for which he could find no voucher among the papers in his possession.

On direct examination, he says upon this point:

Q. "Have you made careful search among all your papers for the tax bill for the year 1875; and, if so, have you not been able to find it?"

A. "I have made search and have not found it. I have looked over the papers."

On cross-examination at page 43 he is asked:

Q. "How do you know you paid the taxes for the year 1875?"

A. "I could never find the bill and the expression was made to me that it was paid."

Q. "Why did not you pay the bill for 1875 if you had charge of Jenifer's business?"

A. "They would not take it, I suppose; they did not want to be paid twice."

It was in 1875 that the loan was negotiated and the deed of trust made. Out of the proceeds of the loan, as is customary in similar transactions, and as was testified to by the defendant Dodge at page 75, the tax for the current year, amounting to $80.58, was paid. (Exhibit R. P. D., No. 1, at page 90.) Again, there appears no doubt, from what has been quoted of Dutch's testimony, that he was contemporaneously cognizant of the payment, by some one else, of the tax for that year. He claims to have been commissioned by Jenifer to see after the latter's property. It would have been impossible for such an interposition on the part of strangers to have escaped his attention. If it did not escape him then he was placed under notice that outside parties were intermeddling with Jenifer's property rights. His knowledge, under the circumstances, was, presumably, Jenifer's knowledge. The question presents itself upon this state of facts: Why was no action taken, then and there, by Jenifer or by his agent to avoid the consequences of the alleged fraudulent practices of which complaint is now made, and which the slightest investigation must have developed at the time? Again, is it probable that parties who had perpetrated the forgery of this deed of trust would have deprived themselves of such a considerable part of the avails of their crime as is exhibited by this tax receipt, or have performed an act of such gratui-

tous and dangerous generosity as was involved in the payment of the tax?

The alleged conversation between Jenifer and certain parties to which Dutch testifies at page 41, even if it were not inadmissible for any purpose under Sec. 848, Rev. St. U. S., is so vague and inconclusive as to throw not even a shadow upon the transaction sought to be impeached. The ready manner in which this part of his testimony is given is strongly suggestive of preparation and ingenious coaching. The same observation is applicable to a similar portion of his wife's testimony. The glibness with which Dutch narrates not only the surrounding circumstances, but the very words of this interview is in marked contrast with the dense ignorance and stupidity which he displays under cross-examination at pages 42 and 43.

There is no defined attempt to connect the alleged participants in that interview, other than Jenifer, with the defendants in this cause or with the parties concerned in the negotiation of the loan or in making the deed of trust, and the evidence itself is, as I have claimed, totally inadmissible for any purpose whatever.

The residue of Dutch's testimony is directed mainly to disproving the parenthetical clauses in Callan's affidavit setting forth the locality of Jenifer at the date of the acknowledgment. To the same general effect is the deposition of Mary A. Dutch, the wife of Anthony. The latter, at page 45, is ingenuous enough to say in answer to the questions:

Q. "Do you not know what a deed of trust is?"
A. "I can't say that I do; sir."

Q. "You know what a deed of release is?"
A. "No, sir."
Q. "The will of Jenifer gives you $1,100.—, does it not?"
A. "Yes, sir."
Q. "Have you received any of it?"
A. "I have not; sir."
Q. "And you would not be able to get any of it unless you succeed in this suit?"
A. "Of course not."

The former exhibited an interest not less acute in the administration of Jenifer's property in her answers to interrogatories at the foot of page 53 and on page 57.

The testimony of Benjamin M. Beall, at pages 46 and 49 is introduced to show that Jenifer was on Samson street at the house of Dutch at the time of the execution of this deed of trust.

John H. Steward was the highest bidder at the sale in 1881, and at pages 55 to 57 explains that he did not comply with the terms of sale because he would not be satisfied with a title to the property that did not come through the courts. It is to be remembered that Danenhower entered a public protest against the sale at the time that it was made. Hence Steward's apprehensions were aroused and he was not inclined to consummate his bargain until all threatened disputes had been adjusted.

It was in the course of Dutch's testimony that the paper purporting to contain exemplified copies of Jenifer's will and of the letters of administration c. t. a. to the witness were filed with the examiner by complainants' counsel. This was not prefaced by a tender or offer of the papers in evidence, and, so far as we are advised by the record, the paper was not

submitted to the opposite counsel for inspection. It cannot be considered a legitimate part of the record for any purpose, and is clearly incompetent to establish the will of Jenifer as a muniment of the complainants' title to the land in question, nor as evidence of their alleged heirship. The point has already been decided by this court in the case of *Robertson et al.* vs. *Pickrell et al*, 109 U. S., 608.

It will be observed, upon a review of complainants' testimony, that, when it is not devoted to the attempted impeachment of that part of Callan's *ex parte* affidavit wherein he locates, in parenthesis, Jenifer's domicile at the time of taking the latter's acknowledgment of the execution of the deed of trust, it is directed to the effort to establish, through the medium of alleged conversations, the existence, from time to time, of doubts in the minds of the several principal defendants touching the *bona fides* of the loan and trust. In other words, after having, by their own or their agent's misstatements, succeeded in sowing in the mind of one of the trustees the seeds of suspicion touching the *bona fides* of the deed of trust, they would now seek to use his act, while under the temporary influence of such misstatement, as a ground for setting aside the deed without regard to the fact that further inquiry satisfied the trustee of the entire validity of the instrument and of his obligation to execute the trust thereby imposed.

It is evident, upon examination, that the complainants' bill is pre eminently fishing. Together with the subsequent proceedings it exhibits a reckless attempt, by the appellees, to establish the existence of fraud and the commission of forgery solely by

doubt, innuendo and hearsay. Seven years had been permitted to elapse without any effort being made to remove the cloud alleged to be cast by the deed of trust on the title to the lot in question. During this interval, the existence of the trust was known to Jenifer and to the complainants, and the property had been, repeatedly, offered for sale to satisfy its provisions. Yet no application was made to secure the preventive aid of the court, and it was not until after the property had been actually bought in by a *bona fide* purchaser that the original bill was filed. This pleading, so far from setting up facts from whose existence fraud can be inferred, avowedly proceeds upou the complainants' ignorance of the details of the alleged fraud and forgery, and of the very facts themselves. In general terms, the loan is denounced as fraudulent and the deed is declared to have been forged and, for the rest, the complainants plainly relied upon their ingenuity in being able to distort to their own ends isolated facts and details discoverable through the medium of the defendants' answers and testimony. Hence, they were quick to avail themselves, by amendment, of the disclosure by the defendant, Darneille, of the holder of the promissory note and exhibited an almost wolfish eagerness to take advantage, at the same time, of the clerical error in Callan's *ex parte* affidavit which located Jenifer, at the time of the execution of the deed of trust, on Lot H. square 367, instead of at the residence of Dutch, on Samson street. No less than five affidavits accompany the application for leave to file an amended bill, each of which is devoted exclusively to the denial of this one casual error in the notary's affidavit.

Much the largest portion of the complainant's testimony is directed to the same object. When it is not, that testimony will be found to be limited as follows:

1. To an attempt, on the part of the alleged executor Dutch, to show by statements of his testator, Jenifer, in his lifetime, that this property was unincumbered because he was not indebted to any one. This we have shown to be incompetent on statutory grounds.

2. To prove, by the parol admissions of Darneille, one of the trustees, that the trust was forged. These admissions, it is claimed, were made to the witness Danenhower, on the occasion of his first acquaintance with Darneille, and of his introductory visit to that gentleman. The flagrant manner in which the witness contradicted himself upon this, as well as upon other points in the process of cross-examination, rendered his testimony valueless for any purpose and made it unnecessary to confute him by the additional deposition of the defendant whom he had so grossly maligned.

3. To impeach the integrity of the trust by showing that, at one time, the defendant, Robert P. Dodge, another of the trustees, had been so infected by doubts of its validity as to actually execute a deed releasing it. This, also, rests upon the testimony of Danenhower, who, while he admits that the deed of release was drafted by him, and that he presented it to Mr. Dodge for his signature, is quite reserved upon the subject of the zealous efforts which he employed to induce that gentleman to sign it. These efforts, as Mr. Dodge afterwards testified (page 76), involved

the crafty suggestion and vehement assertion that this trust was the work of parties who were contemporaneously engaged in the fabrication of similar forgeries, and who, having been convicted, were then suffering the penalties attendant upon their crime.

The facts, therefore, from which the court is called upon by the complainants to find fraud and upon which they are asked to declare this deed of trust a forgery are:

1. The alleged statement of Jenifer, the complainants' testator.
2. The alleged admission and pretended self-convictions of the defendant and trustee Darneille.
3. The doubt exhibited by the trustee Dodge of the genuineness of the deed as exhibited by his signing the release.

To these may be added the failure on the part of the holder of the note, for so many years, to execute the trust. This, however, may be fairly off-set by the failure, throughout the same space of time, of Jenifer and his alleged heirs to vacate the trust of whose existence he and they were undoubtedly advised from the beginning.

The testimony being of this vague, contradictory and insufficient character, the demurrer interposed should have been sustained.

In marked contrast with the testimony submitted on behalf of the complainants are the direct and unequivocal representations of the witnesses introduced for the defense. First in order, among them, is the witness James N. Callan. This gentleman is the Notary Public who took Jenifer's acknowledgment to the

execution of the deed of trust. He had known Jenifer for many years. At pages 60 and 61 he details the facts and attendant circumstances of the acknowledgment in the following straight-forward terms:

"All that I know about that acknowledgement is (I was trying now to fix the date. You say it was July 8th, 1875. I was in Norfolk on the 4th of July; the 5th was Monday. I was here in Washington on the 8th; I was home on the 7th); that there was a gentleman came where I was living at that time, 354 Pennsylvania avenue, and inquired for me, Callan a Notary Public, in that neighborhood. One of the young men living in the house with me brought him into my room. I was lying down, and he said, Mr. Callan, an old colored man, Mr. Jenifer, wants you to come and take his acknowledgment. I told him I would go. He had a carriage there, and we took it and went to where Mr. Jenifer was. He expressed surprise at bringing a young Mr. Callan, as old Mr. Nicholas Callan, my uncle, had always done business for him, and he at one time owned this property conveyed in this deed, and had always been his friend, and my Aunt, Mrs. McQuilland had been a great friend of his, and he said that as long as I had come by mistake, being the wrong Mr. Callan, he would not send me away; so he executed the papers before me.

Q. Where did you find him?

A. I found him in bed. He was lying down and got up partly—half-sitting-up position—while the paper was being read to him. The man with me read it to him. He made his mark, and also made the remark about somebody had not done fair with him, and that it would be done fair this time.

Q. Did he make his mark; how did he execute the paper?

A. By touching the pen.

Q. Did you hold the pen?

A. I did as he touched it.

Q. He acknowledged it before you?

A. And he acknowledged it before me. I was going away without taking his signature to the note, and Mr. Hall (the man that came for me) called me back to have the note signed and witnessed, which I did.

Q. Do you know where the house was you went to take this acknowledgment?

A. No, sir; I can't say positively where the house was.

Q. You were told that you were going to his house?

A. Yes, I went, and there he was in bed.

Q. Here is an affidavit which you filed in this case, and there (is) a sentence in parenthesis in which you say that the residence you went to was on O street, between 9th and 10th streets, on lot H, Square 367; can you explain about that parenthesis; who prepared the affidavit?

A. I guess you [meaning Mr. Jones] can explain that better than I can. You [meaning Mr. Jones] prepared it.

Q. In regard to the note; he also made his mark to the note?

A. He also made his mark to the note.

Q. To whom did you give the note and deed of trust after they were executed?

A. Mr. Hall took the deed of trust and note and got into the hack. There were several there. Mr. Hall put them in his pocket for fear the ink would spill on them.

Q. You have no interest in this suit?

A. None in the least.

Q. When you gave me the data to prepare the affidavit you told me you went to his residence?

A. Yes, sir.

Q. Did you tell me it was on O street, between 9th and 10th streets?

A. No; I never knew he lived on O street.

Q. This part in the affidavit in parenthesis was not put in right?

A. I think you (meaning Mr. Jones) added that without my knowing it.

It is impossible to read this direct statement without being convinced of its intrinsic truthfulness. The employment was early in the notarial career of the witness and the reminiscent character of his initial conversation with Jenifer, coupled with Jenifer's semi-paralyzed condition, were circumstances calculated to imprint the incident upon his recollection. He explains, in a perfectly satisfactory manner, the presence, in his affidavit, of the parenthetical misstatement which furnishes the objective point of such strenuous attack by the complainants. It turns out to have been a gratuitous assumption of fact by the attorney who drew the affidavit which was signed by the witness without reading and in the naturally confident belief that it conformed strictly to his instructions. It is self-evident, almost, that in giving the latter he had told his counsel, what was strictly true, that he had taken the acknowledgment of Jenifer at his residence. The attorney identified the latter, naturally enough, with the only real estate owned by Jenifer and, of his own motion, inserted the locality but, moved by a proper impulse to distinguish the observation as one which was extraneous to the body of the affidavit and referable to other authority than that of the affiant, he enclosed it in brackets. Notwithstanding this simple and natural explanation of what would otherwise be a damaging discrepancy the witness is subjected to a cross-examination upon this point which would be, in the perusal, insufferably tedious were it not rendered, at times, supremely ludicrous. This process,

so far from shaking his direct-examination rather tended to emphasize and make more definite the facts therein detailed and furnished a medium for their full confirmation.

The sole apparent discrepancy in the witness's testimony occurs at page 65 of the record, where he is made to say, on cross-examination: "I thought it strange that Jenifer should not recognize me, as he knew me me very well *in raising volunteers for Mexico.*" This error—manifestly a clerical one—escaped observation until too late to secure its correction. The palpable anachronism involved in the alleged statement stamps it unmistakably as a casual error of the examiner or his clerk, and one that would not merit this notice save for the extravagant effort which was made at the last hearing to make it the basis for impeaching the witness's general testimony. It is not to be presumed that the effort will be renewed here or, if it is, that it will be seriously considered.

Mr. Robert P. Dodge testifies, at page 74, to the negotiation of the loan through the then existing firm of Dodge & Darneille whereof he was the senior partner. The following is from his direct-examination upon this point:

Direct-examination by Mr. JONES:

Q. Please state your name, occupation, and residence?

A. Robert P. Dodge; sixty-five years of age; assessor of the District; Georgetown, D. C.

Q. Did you know a man by the name of Thomas Jenifer?

A. No, sir.

Q. There is involved in this case a deed of trust purporting to have been made by Thomas Jenifer to yourself and Philip A. Darneille, on the 8th day of July, 1875, and conveying lot H, in square 367, to secure the payment of a note for one thousand dollars at two years after date to the order of John G. Hall; will you state in your own way all you remember about it?

A. About the 4th of July as well as I remember, Mr. Dudley came to our office, on the corner of 8th and F streets, and talked with Mr. Darneille, my partner, and he turned to me in another part of the room, and said, Colonel, I think this will suit the doctor's one thousand dollars. I looked at the papers—the abstract of title, etc.,—and examined them carefully and was satisfied myself, so far as I could see, that it was a proper loan. After the papers were all prepared, the deed of trust, etc., I took them over to Dr. Peter and got the check, I think; got the money at any rate from him. I went to the tax office and paid the taxes and paid over the remainder to Mr. Dudley. I was not able to see the party or anyone else, because at that time Mr. Darneille had been taken sick and gone off to the springs.

Q. State who you mean by the doctor?

A. Dr. Armistead Peter.

Q. What relation, if any, was he to Mrs. Britannia W. Kennon?

A. Son-in-law.

Q. Whose money was it that was invested in this note?

A. Her money, as I understood.

Q. In what business were you then engaged?

A. Real estate broker.

Q. In what business was Mr. H. H. Dudley engaged?

A. In the same business.

Q. Do you know whose abstract of title was furnished?

A. William R. Woodward's.

Q. Please look at that and see if that was the tax bill you paid?

A. I judge that to be the tax bill; I am certain of it; there was a year's tax then due.

[Mr. JONES: I offer said tax bill here in evidence, and the same is herewith filed in evidence and marked Exhibit R. P. D. No. 1.]

WITNESS: That was the only bill unpaid, as well as I remember the abstract of title.

Q. Is that the note, Mr. Dodge, that was negotiated at the time you have spoken of?

A. That looks to me to be the note; I don't know; I know it to be so, because here are my endorsements on the back in my handwriting.

[Mr. JONES: I file said note here in evidence, and the same is herewith filed in evidence and marked Exhibit R. P. D. No. 2.]

He then testifies to the fact of the first sale and the failure of the purchaser, Steward, to comply with the terms, as follows:

Q. Look at this paper (filed herewith in evidence, and marked Exhibit R. P. D. No. 3) and state what it is.

A. That is a paper from George Peter.

Q. Who is the Peter that signs that paper?

A. Hon. George Peter, formerly Senator from Maryland.

Q. What relation is he to Mrs. Kennon?

A. Cousin.

Q. Any business relation?

A. And her attorney.

Q. You received that paper at or about its date?

A. Yes, sir.

Q. Upon the authority of that paper, please state what you did?

A. We advertised and sold the property.

Q. To whom did you make sale at that time?

A. I think his name was Steward.

Q. State why you did not make a deed to Mr. Steward?

A. As well as I recollect, he wanted Mr. Peter to guarantee that he should have no court fees to pay or something of that kind.

(MR. WISWALL: I object to any talk between the witness and Mr. Stewart as improper.)

Q. Did Steward comply with the terms of sale?

A. He wanted to do so, but did not.

Q. What prevented him?

A. He wanted a guarantee from us, as trustees, or from Mr. Peter, as attorney, that he would not be molested.

Q. What response did you make to that?

A. We were willing to make the deed whenever Mr. Peter directed us in writing to do so.

Q. Was that sale afterwards rescinded?

A. It was by returning him the money, as I understood, the one hundred dollars he had deposited. He demanded it, and I understood got it from Mr. Dowling, the auctioneer, by order of Mr. Peter.

Immediately after this sale the effort was made to convince the witness that the deed of trust was a forgery. At page 76 he is examined, as follows, upon this point:

"Q. Upon the proof being taken for the complainant, they produced and filed a paper, which I now show you, being Exhibit W. D. No. 2.

A. I signed that paper under a false impression. From statements made to me I believed note and deed of trust, at that time, to have been forged, or a forgery.

Q. What did you think was forged?

A. The name of Thomas Jenifer on the original deed of trust and note.

Q. Who was it impressed you with the belief that it was a forgery?

A. A Mr. Danenhower—probably C. M. Matthews, connected with him—Mr. Danenhower particularly.

They brought me affidavits from the family of Jenifer and other matters to bear upon me, there being, at that time (at the time this negotiation was made) several forgeries by colored people, I was led to believe that this was one of them. I subsequently made up my mind that it was not, upon other evidence being submitted to me.

Q. After you had ascertained, as you say, that it was not a forgery, did you then require or request this deed of trust to be returned to you (Exhibit W. D., No. 2)?

A. That is my recollection, but I concluded that it was of no account, because Mr. Darneille had not signed it; he had refused to sign it."

He is cross-examined upon the release at pp. 79, 80, 81, as follows:

"A. I explained before, from assurances given to me, affidavits presented connected with the forgeries, at the time, that this was a forgery. That was the reason I was willing to make the release; just as well satisfied as if I had seen it done.

Q. Did Mrs. Kennon, in writing, direct you to release?

A. Mrs. Kennon, I have remarked before, I don't remember of seeing or hearing from in the case before. Dr. Peter or George Peter represented her.

Q. Did Dr. Peter, or either of the Peters, direct you in writing to release the property?

A. No, sir.

Q. Did they ever direct you verbally to release the property?

A. They did not.

Q. Did you then release it without consulting them?

A. I released it from the affidavits presented to me, that it was a forgery, and from the statement of Dr. Peter, that he was so well satisfied of it that he was willing to pay Mrs. Kennon the money himself.

Q. Is this Dr. Peter the one who appeared as her attorney and was empowered to act for her?

A. Dr. Peter was the doctor and George Peter was the lawyer.

Q. Peter, the lawyer, acted as her counsel and acted with you in the matter?

A. Not as to the release. No, he did not appear in the case until after he ordered the advertising.

Q. Then Peter the lawyer, did intervene in the case?

A. Yes, sir.

* * * * * * * * *

Q. Did you change your mind in regard to the character of the note and deed of trust from statements made to you by Callan?

A. Principally so.

* * * * * * * * *

Q. What did Callan tell you in regard to the character of this note and deed of trust?

A. That he was present; knew Jenifer, and had known him for many years, and witnessed his signature.

Q. He didn't tell you the house and street where he found Jenifer?

A. Not that I remember just the facts of the case.

Q. This conversation with Callan was after the deed of release was made by you?

A. Yes, sir.

Q. Did you ever request Danenhower or anyone else to return and cancel this deed of release?

A. As I remarked before, I don't remember whether I did positively, knowing that my co-trustee had refused to sign it.

Q. Did Mrs Kennon or either of the Peters request you to recall that deed of trust?

A. No, sir; not that I remember. They looked upon it in the same light."

At page 84 the witness concludes his testimony upon this point, as follows:

"Q. After you signed that deed of release, however, did you make sufficient inquiries to satisfy you that it was not a forgery?

A. I found that out after I signed the release, and before we were directed to make the second sale.

Q. No proof, however, was ever made to you that it was a forgery, was there?

A. Nobody undertook to prove that it was a forgery."

These extracts from the testimony of the witness exhibit the almost morbid sensibility of an honorable man to avoid the slightest imputation of connivance in a transaction about which there could exist the bare imputation of fraud. Nothing could be more frank and ingenuous than the conduct of Mr. Dodge in dealing with the complainant's agent on the subject of the deed of trust. Until satisfied by evidence of the actual fact of its proper execution his sensitive regard for probity dictated the allowance of overweening consideration to the unsustained imputations of fraud made by the agent Danenhower and blinded him to the fact that they were being urged on behalf of parties whose every interest demanded that he should become the instrument for securing release of the trust. Fortunately for the *bona fide* holder of the note his sense of justice urged him upon an investigation which developed, in time, the real fact of the transaction and the artful conspiracy of which he had been so nearly the dupe. As a consequence of this disclosure the second sale was effected. (p. 76.)

"Q. State, then, if you sold the property again?

A. We sold the property again—a second time to Mr. Cissel.

Q. Look at these two papers attached—look at the under one first—and state what they are.

A. That is the auctioneer's account of sales and your statement of the fund.

Q. That paper is correct, I suppose?

A. Yes, sir."

[Mr. JONES: "I file same paper here in evidence," and the same is marked Exhibit R. P. D. No. 4.]

The deed of trust was fully identified by the witness, Callan, who was recalled for the purpose (see p. 85). The original was thereupon filed as "Exhibit J. N. C.—R. P. D. No. 5, and is copied at p. 93 of the record. This instrument supplied the last required link to establish, beyond question, the *bona fides* of the transaction here sought to be impeached. This, taken in connection with the duly authenticated note (Ex. R. P. D. No. 2, p. 91) and the receipted bill for the tax of 1875 (Ex. R. P. D. No. 1, p. 90) can leave no doubt that the loan was actually made for the benefit of Jenifer in 1875; that from the proceeds was deducted, with his approval and consent, the current tax of that year, and that he deliberately made, in evidence thereof, the promissory note and executed, as security therefor, the deed of trust which furnish the subjects of the pleadings and testimony in this cause.

It remains only to note that the fact of the loan is, further, abundantly evidenced by the written answers of the holder of the note, Mrs. Britannia W. Kennon at pp. 25-27. Like the witness Dodge, she frankly admits the effect upon her of disparaging reports relative to the deed of trust, but, at the same time, shows her capacity for decisive action when she

had become finally disabused of the doubts which such reports were so well calculated to create.

I have not thought it necessary to advert to the ill-pleaded and inconsequential averment of the 12th paragraph of the original bill (p. 3) touching the alleged existence "in 1874 and 1875" of "a noted real estate pool which did its business in the office of said James Nich. Callan," etc., because, even if it were true, no connection is, in terms, claimed between such "pool" and the transaction in question, neither is such connection nor the existence of the "pool" itself established by testimony on behalf of the complainants. Again, the existence of such "pool" is denied in the answers and conclusively disproved by the testimony of the defendant. The presence of this gratuitous averment in the bill was the occasion of Callan's *ex parte* affidavit (p. 12) filed as "Ex. A" with the answer. He thus refers to it at p. 86 of his cross-examination:

"A. I am not one of the defendants in this case, and have no interest in it."

"Q. How came you make that affidavit at all, and did you read it over before signing it; and did you know Jenifer when he was living on his O street property?"

(Mr. JONES. Question objected to because it is multifarious.)

"A. I think I have known Jenifer for thirty-five years, as I have already stated. The affidavit was made in my own defence, having been attacked by the bill of complaint in this case. I have no recollection of reading it over"

In conclusion it is observable that, whereas, on the one hand, the complainants fail, wholly, to establish

their right to sue as the heirs and devisees of the late Thomas Jenifer, and whereas, the general and vague allegations of fraud and forgery in their bill of complaint, are wholly unsustained by proof; on the other, the defendants, by the direct and positive testimony of unimpeached witnesses, disprove, most effectually, every averment of fraud, and establish, beyond any possibility of doubt, the actual and *bona fide* execution of the deed of trust by the late Thomas Jenifer.

It is, therefore, respectfully submitted that the decree of the Supreme Court of the District of Columbia should be reversed.

T. A. LAMBERT,
*Counsel for Appellant.*

125-171

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

SAMUEL S. CISSEL, *Appellant*,
*vs.*
ANTHONY M. DUTCH, *et al.* } No. 153.

**Brief of Francis Miller, of Counsel for Appellees.**

**Abstract of Pleading.**

FRANCIS MILLER,
*Of Counsel for Appellees.*

R. O. Polkinhorn, Printer.

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} No. 153.

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**Brief of Francis Miller, of Counsel for Appellees.**

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## Abstract of Pleading.

This is an appeal from a judgment of the General Term of the Supreme Court of the District of Columbia, declaring fraudulent and void a certain pretended deed of trust and promissory note alleged to be secured by the said deed, both executed in the name of one Thomas Jenifer, now deceased; said decree also declaring fraudulent and void a subsequent deed of conveyance made by the trustees under said pretended deed of trust to Samuel S. Cissel, the present appellant.

The plaintiffs, respondents here, sued as all the heirs at law of said Thomas Jenifer, deceased, and as devisees under his last will and testament.

The defendants, Dodge and Darneille, were the trustees under said pretended deed of trust; defendant Hall was the payee in said pretended promissory note; defendant Kennon was the holder of the same; defendant Stuart was a purchaser from the trustees of the premises described in said pretended trust deed, but did not take title; and defendant Cissel was a subsequent purchaser, who accepted conveyance from said trustees.

The premises in question are situated in the city of Washington, in the District of Columbia, and all the parties were, at the beginning of the suit, residents of said District, except plaintiffs Nance and her husband, who were residents of the State of Maryland, and defendant Hall, whose residence is unknown to plaintiff.

All the defendants except Hall were served, and Dodge, Darneille and Cissel made answer.

The complaint alleges that Thomas Jenifer, a resident of the city of Washington, in said District of Columbia, died March 3d, 1878, in said city, seized of the premises in question by a deed duly recorded; that by his last will and testament, duly probated, etc., the premises were devised to certain of the plaintiffs and certain persons deceased, which plaintiffs, with the other plaintiffs joined, were all the heirs at law of said Thomas Jenifer, deceased; that on or about July 8th, 1875, some person unknown forged, in the name of said Thomas Jenifer, a promissory note for $1,000, in favor of defendant John T. Hall, and a deed of trust securing the same, pretending to convey the premises in question to defendants Dodge and Darneille as trustees for that purpose; that said Jenifer was never indebted to

said Hall in said sum, or any sum whatever, and in no way authorized any such transaction, and in no manner signed said note or executed, acknowledged or delivered said deed; that the plaintiffs first learned of said forged note and deed in July, 1880.

The complaint further alleges that said Dodge and Darneille, trustees, after advertising said premises, sold the same at public sale in June, 1881, to defendant Stuart, but owing to some alleged forgeries, the premises were not conveyed to him; that subsequently the said trustees having again advertised, sold said premises on the 29th day of May, 1882, at public sale to defendant Samuel S. Cissel, and executed and delivered to him a deed, which was subsequently recorded.

The answers deny the forgery, and allege that said Jenifer received said $1,000 from defendant Kennon, the loan being made on the security of said note, and trust deed securing the same. The allegations respecting the two public sales are substantially admitted as above summarized, but the answers allege that the sale to defendant Cissel was made in good faith by the trustees after investigating said charges of forgery, and being satisfied that they were false. Defendant Cissel further alleges that he is a *bona fide* purchaser, without notice of any kind. Defendant Darneille further alleges that plaintiff Anthony M. Dutch, in 1880, admitted the genuineness of said note and trust deed, but claimed that the note had been paid, and that the trustees should give a release.

Evidence was taken, and, on hearing in Special Term, the bill was dismissed. The complainants appealed and the General Term unanimously reversed

the decree of the Special Term, and passed a decree granting the relief prayed. The appellant, the purchaser at the sale under the alleged deed of trust, brought the case here.

At the time he purchased he was duly notified, by the authorized attorney of the complainants, that the deed of trust was a forgery, so he bought with notice subject to all their rights and equities. (See Record, p. 145.)

There would, therefore, seem to be nothing in this case but the simple question of fact: is the deed a forgery or not? On this question the burden of proof is on the appellant. The original title of the complainants is undisputed, and, indeed, the appellant claims under that title, and is estopped to deny it. When, therefore, he sets up as his defence a transfer of that title to him he is bound to make out that title by preponderating proof. It is not the ordinary case of a party alleging fraud who is bound to establish that fraud, but is a question of fact; is the deed the deed of the devisor of the complainants or not? If we admitted the deed to be genuine and claimed that it had been obtained by fraud, then the burden would be upon us to make the necessary proof, were it not for the fact that the party charged with having executed the alleged deed of trust is shown conclusively to have been an unlettered man; one who could neither read nor write. Under these circumstances it is incumbent upon the one wishing to claim under such a deed "to show, *past doubt*, that the party fully understood the object and import of the writings" he executed.

*Seldon* vs. *Myers*, 20 How., 506.

Such is the law where the execution of the instrument is not questioned. How much stronger the reason is, when, as in this case, the execution is denied, the *alleged grantor is dead*, and we have not even his signature to examine to aid us in determining the fraud in the execution; the instrument being *signed by mark*. Surely in this state of the facts it was incumbent upon the appellant "to show, *past doubt*," not only that the grantor, Jenifer, "fully understood the object and import of the writings," but that he *actually executed them*.

**Is the Deed a Forgery?**

The record sufficiently discloses the fact that in 1875 there was a combination between two colored men named Brooks and Stewart and white man named Dudley, whose business it was to get up deeds of trust upon property in Washington, and to have men and women, personating the owners, to execute them with all due formality and then get the money on them. (See Record, pp. 190, 88, and 207.)

This was done in many instances, and Brooks and Stewart were sent to the penitentiary for these crimes. Dudley negotiated this loan with Dodge and Darneille. (Record, p. 199.)

The defendants, Dodge and Darneille, negotiated at least one other of these forged deeds of trust, besides the one in this case, and the notary, Callan, took the acknowledgment of both these deeds (Record, pp. 154, 192, and 222), the second one a month or two after the Jenifer deed. (Record, p. 193.) He, Callan, is shown to have been in close relation with Dudley, and at that time, or immediately after, to

have occupied the same office with him. (Record, pp. 218, 221–2.)

The alleged deed of trust bears date July 8th, 1875. No steps were taken to enforce it until July, 1881. No interest was ever demanded of Jenifer, the grantor, during his lifetime, although he lived nearly three years after its date, and one year after the maturity of the note, and neither he nor any of the complainants had any knowledge of the deed until July, 1880, when a search of the title, made for the purpose of effecting a loan on the property disclosed that it had been recorded. In the meantime the trustees, the lady who had loaned the money and her son-in-law, had concluded that the deed was a forgery (See Record, pp. 62, 189, 197, 24, and 80.), and so satisfied was the son-in-law of that fact that he said he would pay the money himself. (Record, p. 198.) Her attorney, the Hon. George Peter, a leading attorney of the Montgomery Co., Maryland, bar, and now president of the Senate of Maryland, was also convinced of the fraud, and advised his client to sign a release of the deed, *which she did.* (Record, p. 62.)

Three or four months after the execution of the alleged deed, two men called at the house where Jenifer lived, and made enquiries as to whether he had not encumbered his property to the amount of $1,000, which he positively denied. (Record, p. 101.) One of these men was identified as one of the persons attending the examination of the witness, and as Darneille is shown by the record to have been present, it was, in all probability, he who made the enquiry. (Record, pp. 169, 173.) Enquiry was also made of the notary, Callan, during the two years before the

maturity of the note, by the trustees and the parties representing the lender of the money.

When the attempt was made to effect the loan in 1880, the complainant, Anthony Dutch, applied to Mr. Danenhower, a very reputable real estate agent of Washington, who ordered the abstract of title that disclosed the existence of the fraudulent deed. Danenhower states that Dutch at once said that Jenifer had never made such a deed to his knowledge (Record, pp. 74-5).

Dutch called on Darneille to enquire about the deed, and he spoke evasively about it, and asked how much he (Darneille) could make out of it, to which Dutch made no reply, and Darneille asked him to send Mr. Danenhower to see him about it. (Record, p. 96.)

When Danenhower called, Darneille told him that he would sign a release of the deed if Mr. Dodge would (R., p. 78). Whereupon Mr. Danenhower prepared a release, which was signed, as before stated, by Mrs. Kennon, the lender of the money, under the advice of her counsel, the Hon. George Peter; and Mr. Dodge also signed it (R., p. 197), having, as he said, not the slightest doubt that the deed was worthless (R. p. 197).

When Danenhower presented the release to Darneille a very remarkable conversation ensued. Darneille asked what he was to make by the transaction. Danenhower told him the usual fee to a trustee for executing a release—$5, or one-half of it, as there were two trustees. He demurred, and said that if the parties would pay $400 he would sign the release, and would divide the money with Danenhower. That Danenhower could get a deed of trust from the

owners for $400, and he would negotiate it and they could divide proceeds. Danenhower, of course, indignantly rejected the rascally proposition, and Darneille refused to sign the release. Danenhower's account of this conversation is given on page 83 of the Record, in the following language: "He said he would release the property if I got Mr. Dodge's signature. I procured Mr. Dodge's signature in the regular way, and presented it to Mr. Darneille, and he then said, 'What have I to make out of it?' or words to that effect. I said to him, 'You have agreed to release it.' 'Well,' he said, 'I won't release it unless I am paid for it.' He also said, 'You are a notary public; you can draw up a trust for $400; get Dutch to sign it, *as he cannot read;* I can sell the note; I can work the note.' I declined, and said I would have nothing to do with it. He even offered me $200, one-half of the $400. I told Mr. Dutch next time I saw him about my conversation with Darneille." And the substance of this conversation is again stated on pages 68 and 69 of the Record.

Darneille, as before stated, was in attendance at the taking of the testimony; he was a party to the suit, trustee for his client, for whom he loaned the money, and his honor and honesty were most grossly impeached by this testimony, *yet he did not dare to go on the stand to deny it, nor did the counsel for the appellant call him as a witness.* Such conduct would justify the belief that he was a confederate with Dudley and Stewart in the original fraud.

After Danenhower's refusal to join in the attempt to rob his clients, Darneille seems to have determined to endeavor to sell under the deed of trust;

and in July, 1881, the property was offered for sale and bid in by one Stewart, who was desirous of completing the purchase, but could not because the trustees could not give a good title, and the sale fell through (Record, p. 188).

Afterwards, in May, 1882, the property was again offered for sale, and bought at auction by the appellant, notice having been duly given at the sale that the deed was a forgery, as above stated (R., p. 145).

The testimony on behalf of the appellant consists of that of the notary, Callan, and the trustee, Dodge. Mr. Dodge, who was a most honorable and correct man, does not profess to know anything about the execution of the deed, and scarcely anything of the transaction, as it was under the management of his partner, Darneille (R., pp. 204-5, 208).

He never saw Jenifer, the grantor (R. p. 194), nor Hall, the payee of the note (R., pp. 193–4); he does not even know that the appellant has ever paid one cent of money on the purchase (R., p. 204), nor has he ever paid Mrs. Kennon anything on account of the note (R., p. 204). For three or four years he had no more doubt that the note was a forgery than if he had seen it done (R., pp. 180, 189, 197). He says the affair was entirely dropped in 1877, at the time of the maturity of the note (R., p. 189), Dudley came to his office, July 4th, 1875, and offered this loan to them, Darneille said this would suit Dr. Peter's $1,000, and Dodge examined the papers, and satisfied himself it was a good loan. When the papers were all prepared he got the money from Peter, and concluded the transaction, paying the tax bill for the current year, 1875, (R., p. 186), and paying the remainder

over to Dudley (R., p. 185). A very curious fact in the case, which is without any explanation in the evidence, is that the tax bill was paid June 30, 1875, (R., p. 225), four days before Dudley saw Dodge and eight days before the deed of trust was executed.

It will be seen from this evidence that from Dec. 8th, 1875, the maturity of the first interest till after July, 1880, when Mrs. Kennon and Dodge signed the release, the evidence presented to the trustees, to Mrs. Kennon, and her agent and her attorney, left them no hope of recovering the money, which they believed they had been defrauded of. What caused the change of views that led to the attempts to sell does not appear, except that Mrs. Kennon testifies (Rec., p. 62) that Darneille said that the money was justly hers, and thereupon she ordered proceedings to be commenced. It is in evidence that Mr. George Peter (R., pp. 67–8) and Darneille (R., pp. 169, 171), had been more than once in consultation with Callan, the notary, in the interval, and they learned nothing from him that gave them any hope of establishing the genuineness of the deed of trust, but the only witness called by them to establish their case is this same Callan. What new light had he, and whence was it obtained?

In support of the answers of the appellant, an affidavit of Callan was filed, marked Ex. A., which is introduced in the evidence in the examination by counsel for appellant, in which he states the circumstances of his taking the acknowledgment. The affidavit is to be found on pp. 28–32 of the record. In this affidavit he states that he "went to the residence of said Thomas Jenifer (which is on O street, between 9th and 10th streets, on lot H, in sq. 367) for that pur-

pose." Also, "he said he was going to borrow $1,000, and give *the property on which he lived* as security for its payment." And "*the circumstances surrounding the execution of this deed and note were impressed upon my memory*, because of the facts that I was required by reason of Jenifer's sickness and confinement at *home to go to his residence*, though I had been in the habit of seeing him frequently at his place of employment," &c.

Here is a definite statement that on the 8th of July, the date of the acknowledgment, Callan went to Jenifer's residence on O street, between 9th and 10th, that Jenifer said he was going to borrow money on the property on which he lived, and that all the details of the transaction were impressed upon his memory by special circumstances. As was established by the evidence of complainants, beyond any doubt, as will be hereafter shown, Jenifer had not lived in the house on O street for 12 or 13 years, but in a small house in the rear of it, in an alley, and that he had left the O-street property in May, 1875, to go to Dutch's house, and had never returned to it. When confronted on the stand with this contradiction, he, Callan, said that F. W. Jones, then solicitor for the appellant, had put the words in parenthesis "(which is on O street between 9th and 10th, lot H, in sq. 367)" in the affidavit without his authority (Rec., p. 152), and he swore to it without having noticed the sentence in parenthesis (R., p. 163).

This statement, so important in the decision of this case, cannot be allowed to rest on the testimony of a witness who swears in exactly opposite ways in his affidavit and deposition, or who was so careless as not to know to what he was swearing.

In answer to a question by Mr. Jones, he said that as he (Jones) had prepared the affidavit, he could explain the parenthesis better than he could (R., p. 151). But Mr. Jones is not called as a witness to confirm Callan's account of the affidavit, although he must have known how important it was that this should be done in the interest of his client. No professional etiquette could restrain him from doing so, or if he was over sensitive on that subject, he would certainly have felt it his duty to retire from the case in order to give his client the benefit of his testimony.

But there is another sentence in the affidavit that quite as definitely fixes the place where Callan says he took the acknowledgment as that in the parenthesis. He states that Jenifer told him he was "going to give *the property on which he lived* as security." The deed in Callan's hands showed that the property given as security was on O street between 9th and 10th, and if the notary was in a condition to discharge the functions of his office, the discrepancy could not have escaped his notice. He does not claim that Mr. Jones inserted this without his knowledge, and it is quite as conclusive in connection with the deed as the other.

Callan's story is as follows: He had gone to Norfolk on the 4th of July with the militia; was at home on the 7th, and "was not feeling extra good" for the balance of the week (R., p. 157). On the 8th, *just after dinner*, he was lying down, when a man named Hall came with a carriage to get him to take an acknowledgment of an old man named Jenifer. He did not know Hall's first name; never saw him but once or twice before; indeed knew him only

by sight, and never saw him again after the acknowledgment (R., pp. 155-6).

He did not take enough notice of the house to describe it; thinks there was a woman in the room, but don't know whether there was a man or not (R., pp. 157-8), and all this after the circumstances had been specially impressed upon his memory, which is not usually the case (R., p. 32). He says he had known Jenifer thirty-five or thirty-six years (R., p. 149), and that "I had known Mr. Jenifer, the party making the note, ever since *he* was a boy." (R., p. 172.) Callan was forty-four years old when his testimony was taken, 1883 (R., p. 147), and all the witnesses speak of Jenifer as an old man. Dr. Beall says a "man of advanced age" (R., p. 117), which shows how reckless Callan testifies. However, his acquaintance with him was intimate when he "was raising volunteers for Mexico" (R., p. 160). Volunteers for Mexico, so far as is known to history, have only been needed in this country about the years 1846 to 1848. Whether it was the middle-aged *colored* man or the precocious youth of seven years old who was engaged in raising them is rather obscure from Callan's testimony, but in either case the fact would be remarkable if true.

But not withstanding the intimacy between the parties, Jenifer did not recognize his old acquaintance of thirty-five years at all, not even as one of the Callan's (R., p. 159).

If, as was the habit of Dudley and his co-conspirators, they had secured an old man to personate Jenifer, this preliminary talk would have given the pretended Jenifer a sufficient cue to perform his part in the execution of the deed.

But what are we to say of a man who goes with an entire stranger, in the execution of his duties as a notary public, to the bedside of a very old man, a helpless paralytic, unable to leave his bed, or even to sit up in it without support, whom he had known all his life, and who knew his family—an illiterate man who could neither read nor write, and take his acknowledgment to a deed which jeopardized all the little savings of his life in his old age, and suffered him to put that deed and the note secured by it in the hands of this stranger, without any security that it would not be used to rob him of his all? This is the evidence, and this the sole witness that the appellant relies on to show that Thomas Jenifer ever made the deed of trust. We submit that he has entirely failed to make out a case, even if there were no testimony on the other side.

But, so far as testimony can establish such a negative fact as the non execution of a deed, we have the uncontradicted evidence of three witnesses that Jenifer denied, in his lifetime, that he had ever encumbered his property. When Danenhower noticed the deed of trust in the abstract, and spoke to Dutch about it, he immediately said there was no such deed (R., pp. 66 and 74). Jenifer lived with Dutch and his wife from the middle of May, 1875, till the time of his death, and was never out of their house but once during that time. Mrs. Dutch was at home at the time the alleged deed was executed, in sole charge of the old man (R., pp. 119, 120). Neither of them ever say Jenifer sign any deed or other paper. Dutch says that Jenifer had no need of money, and it is certain that his taxes were regularly paid, and that he paid his physician, Dr.

Beall, $25, only one week before the date of the deed (R., p. 45), and that he took the money out of a pocket-book under his pillow, and he gave Dutch money to pay the taxes from the same place. Poor colored men who are pressed for money are not apt to pay their taxes and doctors' bills as long as they can postpone it. The testimony shows that the property rented for $21 per month (R., p. 103), which was certainly a very comfortable provision for a man in Jenifer's condition of life.

A. M. Dutch testifies that he never heard of the deed of trust till Danenhower informed him of it in July, 1880, (R., p. 94), and he told Darneille that Jenifer told him there was none (R., p. 108).

Mr. Dutch and his wife give a very clear account of an interview with two white men who called to see Jenifer in the fall of 1875. Mrs. Dutch says: "I remember two men coming there either in the month of October or November, 1875, and they asked for Jenifer. I met them at the door and taken them into the room where he was. Then I stood at the door and they asked him if he had not borrowed some money on his property, and he told them 'No, never in my life,' and they taken out a paper and told him there was $1,000 against it, and says he, 'Why, never in my life,' says he, and then says he, 'Sho! sho! my cousin there knows I never borrowed a cent.' Then they asked him if he knew John R. Brooks. He told them 'no, sir.' They asked him if he knew Charlie Stuart. He told them that he knew him only by sight. They mentioned another name, but I could never remember his name; and they went away. They did not ask him any more questions." (R., pp. 121-2.)

On cross-examination she repeats the story (R., pp. 140–1). Dutch gives an account of the same interview on page 101 of the Record. It will be remembered that the Brooks and Stewart were the two colored forgers who were operating with Dudley, the negotiator of the loan with Dodge and Darneille, and that Darneille was probably one of the two men who called on Dutch and Jenifer.

Henry T. Wiswall, who filed the bill and took the testimony in this case was the legal adviser of Jenifer for sometime before his death, made two wills and codicil and attended to other business for him. He says: "I found him a clear headed, sensible old man, of very few words. He told me what real estate he owned, and what it rented for, how long he had owned it, and *that he did not owe a cent in the world.*" (R., p. 132.)

Now, as the genuineness of this deed was denied very soon after its date, and its forgery admitted by all the parties interested in it until after they knew that Jenifer was dead, it would seem impossible for better proof to be made in such a case as this, than is here shown.

There is nothing in the record to show that Dudley ever had the least authority to negotiate a loan for Jenifer, or that they ever saw each other, or that Jenifer ever received a cent of the money that was paid by Dodge to Dudley. No connection is shown in any way between Hall, the payee of the note, and Jenifer, and indeed Hall was evidently a man of straw used to conceal the fraud from the actual lender of the money. Darneille does not produce him as a witness, and Dutch searched diligently for him and could not find him. (R., p. 95.)

His signature to the endorsement is proved by no one. The whole proceedings for sale are based upon the fact that Mrs. Kennon is the holder of the note with the words "John T. Hall" written on the back of it, but who wrote those words, whether Dudley or Stewart or Brooks, or whether there ever was such a man as John T. Hall, the proof fails to show.

Mrs. Kennon had no right to order the sale of the property unless she had the note with the genuine endorsement of John T. Hall upon it, and we repeat there is *no* testimony to establish that vital fact.

The appellant says in his answer that he is a *bona fide* purchaser for value without notice, but the notice given at the sale is admitted in the Record, page 145. But there is no proof in the case that he ever paid one cent on the property. The statement of the trustee's account is not evidence of the payment, for Dodge testifies that he made it, and that he does not know that Cissel ever paid anything on the purchase. Moreover, Mrs. Kennon testifies that she never received more than $200 on the note, which was paid her by her son-in-law, Peter, who had before said that he would pay her the whole.

The facts that Jenifer was not at the house on O street between 9th and 10th, at the time of the alleged execution of the deed, and that he was a helpless paralytic, are conclusively shown by the depositions of A. M. Dutch, Mary A. Dutch and Dr. Benjamin M. Beall.

FRANCIS MILLER,
*Of Counsel for Appellees.*

Office Supreme Court U. S.
FILED.
MAR 7 1887
JAMES H. McKENNEY.
CLERK.

IN THE

# SUPREME COURT of the UNITED STATES

ANTHONY M. DUTCH, *et al.*
vs.
SAMUEL S. CISSELL, *et al.*
} In Equity. No. 757.

## MOTION TO DISMISS APPEAL.

The plaintiffs now come by their Solicitor J. Parker Jourdan, and by leave of the court moves to dismiss the appeal of the defendants, in the above cause; because the amount involved, as shown by the record, is not sufficient to give to the court jurisdiction.

The property in dispute was sold at public sale under and by virtue of a deed of Trust, which the plaintiffs, allege is a forgery. The trustees in said trust, were and are, Dodge and Darneille, who put in answers to the plaintiffs bill instituted to set aside the Deed of Trust. Cissell, the defendant, bought the property at the sale. The property brought $1,700. Darneille, see page 8, paragraph 19, swears the property brought its full value. Dodge, the other trustee, see page 6th, paragraph 14th, swears also to the same fact. These trustees are and were realestate brokers.

The only other evidence in the record, is the assessors valuation, June 30th, 1875; see page 90, exhibet R. P. D. No. 1 puts it at 2448.

After the decree of the General Term of the District of Columbia had been enrolled and approved by the chief Justice, and the cause disposed of, in order to confer jurisdiction upon the court, the defendant Cissell, who alone appeals, files with the clerk of the said General Term, four expartee affidavits, page 100. Claiming the property to be worth $2,700.

The plaintiffs insist that these expartee affidavits form no part of the record, and so far as the records show, was

not approved by the court, nor brought to its attention; and this court has repeatedly held, where the record gives the value of the property in controversy, the court will not go outside of the record, and allow expartee affidavits to be read, to give jurisdiction to the court, but will dismiss the appeal; and indeed it would be a dangerous experiment to allow these voluntary affidavits to be heard, because they are at war with the rules of evidence, and do not come, and are not subject to judicial scrutiny, and we well know they can be had at any time by either party to sustain or defeat the cause.

If however the court should conclude that it has jurisdiction, then the plaintiffs move the court to advance the cause on the calender to be heard at its earliest convenience, and base the motion upon the affidavitts herewith filed.

J. PARKER JOURDAN,
*Solicitor for Complainants.*

Mary A. Dutch, widow of the late Anthony Dutch, for and in behalf of herself and the plaintiffs in said suit, being duly sworn doth depose and say, that for the last ten years this affiant hath been, and is now, well acquainted with the property now in controversy in this suit, that her late husband had the entire control of said estate for the space of three years immediately preceeding the death of said Thomas Jennifer, who was confined to his bed with sickness, during and for the space aforesaid; and as benificary in his will continued to control the same, and collect the rents for two years thereafter, and until his death, which occurred about four years ago.

That the said property during all the time aforesaid, rented for eighteen dollars per month, and was kept during the time aforesaid in tenantable and reasonable repairs, and the taxes on the same were regularly paid.

That before the death of the said Anthony Dutch, the said property was sold at public auction, under, and by virtue of a forged and fraudulently executed deed in trust, as fully appears by the testimony and exhibits on file in this cause, and purchased by the said defendant, Samuel S. Cissell, well knowing of the fraudulent character of the said trust.

That under said purchase he then and there took posses-

sion of said property, and has controlled the same ever since. That he has paid no taxes, and suffered the same to increase and remain annually unpaid, which with the penalties for non-payment, and other assessments amount as the certificate from the collector's office shows, to over three hundred and fifty dollars. That since the said sale, the said Cissell has collected the monthly rents of the premises, and appropriated them to his own use. That he has permitted the property to go to waste. That the fences and houses were in ordinary repair when he took possession of the same. That no repairs have been done by him to the premises. That the fences which enclosed the buildings have rotted down, and gone to decay. That the houses have rotted and are tumbling down, and wholly intenantable, though still occupied by impecunious tenants at reduced rents, and that the entire premises are a total wreck. That when the sale took place, about three or four years ago, the property was valuable, eligibly situated, and would have brought at a fair sale, if the title had been assured, at least twenty hundred dollars, and that all the property in the immediate neighborhood has greatly increased in value, yet such is now the dilapidated condition of the premises in dispute, it would not fetch more than ten or twelve hundred dollars. That said Cissell must have received in rents at least eight hundred dollars. The plaintiffs through their counsel, therefore pray the cause may be advanced on the docket so that without further delay their rights may be heard, and interests protected.

MARY A. DUTCH.

Subscribed and sworn to before me this 21st day of April, 1886. [SEAL]

R. J. MEIGS, *Clerk*,
by J. R. YOUNG, *Asst. Clerk*.

Jesse W. Jackson being duly sworn, doth depose and say, that he is a realestate broker, is well acquainted with the value of realestate in the District of Columbia, and that at the request of the widow of the said Anthony Dutch, being Mary A. Dutch, he examined the property now in controversy in the above suit situate on O street between 9th and 10th N. W.—and he found the said property going rapidly to decay. That the fences have pretty well rotted down. The houses

dilapidated and in a state of ruin—leaky and untenantable, and would not bring to-day at public sale more than twelve hundred dollars—or perhaps fifteen hundred dollars, and never was worth more than two thousand dollars.

JESSE W. JACKSON.

Subscribed and sworn to before me this 10th day January, 1887. [SEAL.]

R. J. MEIGS; *Clerk.*
J. R. YOUNG, *Asst. Clerk.*

UNITED STATES OF AMERICA }
DISTRICT OF COLUMBIA. } *ss:*

William H. Brown being duly sworn, says that he is forty-six years of age, and by profession a lawyer. That he has resided in the City of Washington, District of Columbia, for the last 25 years, and for the last 16 years has been engaged in the practice of his profession. That he has had experience in buying and selling real estate in the north western section of said city. That he has owned property in square 368 in said city to an amount in value of more that twenty thousand dollars. That he has occupied and rented property in square 367 during a period of seven years at one time, and again during the year from September, 1882, to October, 1883. That he has negotiated loans for others upon property in said square 367, and is familiar with the value of property in said square. That in his opinion sub lot "H" in said square 367, is worth at a fair market value and adequate price, sixty cents per square foot, or an aggregate of $1639, and he would be unwilling to advise a purchaser to pay a greater sum or price for said property at the present time, and he does not belive that said property could have been sold on the real estate market for a greater sum than the price above named at any time during the last ten years.

He further says that he has no interest of any character whatsoever in said property, or in any litigation concering the same.

WILLIAM H. BROWN.

Subscribed and sworn to before me this 1st day of May A. D.1886. [SEAL ]

R. J. MEIGS, *Clerk.*
B. J. JENNINGS, Jr., *Asst Clerk.*

125-171

Office Supreme Court U. S.
FILED.
MAR 4 1887
JAMES H. McKENNEY.
CLERK.

# IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

SAMUEL S. CISSEL, *Appellant*,
*vs.*
ANTHONY M. DUTCH *et. al.*, *Appellees.*
No. 437.

## Appellant's Brief on Motion to Dismiss.

And the appellant aforesaid, by his solicitor, for cause against the appellees' said motion to dismiss the appeal in the above entitled cause, says as follows:

1. That the low price at which the property was sold on the 29th day of May, 1882, was due to the protest publicly made on that occasion by C. M. Matthews, Esq., on behalf of and as counsel for, the appellees (vide, p. 59 of the printed Record). The averment by the trustee, Darneille, in his answer at p. 8 of the record, was made with reference to the effect upon bidders necessarily produced by such repressive action on the part of the appellees. The same observation is true of the averment by the co-trustee, Dodge, at page 6 of the record, that "the price was a fair one for the property." If, under the circumstances, the property failed to bring more than the price paid for it by the appellant, the appellees are alone accountable; and it must be conceded that $1,700 was a fair price for property worth as much as $2,700 sold, as this necessarily was, in the face of a public

disparagement of title. The averments, under consideration, were made by the trustees in vindication of the publicity, fairness and *bona fides* of their sale and correspond with similar formal allegations to be found in the customary reports of judicial sales, by trustees appointed, from time to time, for the purpose. Such merely formal averments are clearly incompetent to establish the value of the property or to serve as an estoppel, in this respect, upon the appellant who, besides being the actually highest bidder, was, presumably, prepared to become the purchaser of the property for a greater price and one which would be commensurate with its real value, had bystanders not been deterred from bidding by the protest publicly made on behalf of the appellees.

2. That the affidavits of George M. Barker, R. B. Detrick and Burr R. Tracy at pp. 100 and 101 of the printed record were filed by the appellant at the time of his appeal and strictly in conformity with the practice of the court as recognized in *Johnson* vs. *Wilkins*, 116 U. S. p. 392, and *Wells* vs. *Wilkins*, id 393. They were made by parties who are throughly conversant with real estate values in the city of Washington and, in each instance, after a careful inspection of the premises. They established the value of lot H. sq. 367 from 1879, to the date of the appeal at not less than $1.00 per square foot, or in the aggregate $2,731$\frac{4}{12}$. This estimate is aided by the assessment of the property on the tax bill for 1875 at page 90 of the printed record. The total assessed value of the property was then not less than $2,448, or within $52, of the jurisdictional limit as established at the date of this appeal; and it is a matter of public notoriety that the values of real estate, especially in the section to which this property belongs, has steadily appreciated during the past twelve years.

3. That the affidavit of Jesse W. Jackson does not sustain the motion for dismission. It speaks wholly to the sup-

posed value of the houses upon the lot and, if admissible, would seem to establish a higher value for the property than is claimed for it by the appellant. It is submitted, however, that the affidavit is inadmissible in that it is confined to an estimate as of the 10th day of January, 1887. If, however, said affidavit, together with the accompanying one of William H. Brown, be deemed worthy of consideration, the appellant prays leave to submit in opposition thereto the subjoined affidavits of Robert Downing, Geo. A. Hyde, and Zephaniah Jones, who speak to the value of the property as for the past ten years. The filing of such additional affidavits would seem to be warranted by the action of the Court in the five cases of *Wells et al.* vs. *Wilkins*, 118 U. S., 230.

4. That the decree of the Court below in Special Term, dismissing the bill of complaint, should have been affirmed in the General Term, and appellant is confident that, upon the hearing, the decree appealed from will be reversed by this Honorable Court.

Wherefore he concurs in the wish for an early hearing, as expressed in behalf of the appellees, but, recognizing the impracticability of securing an advancement of the cause upon the docket, he hereby tenders himself ready to submit the same to the consideration of the Court upon printed arguments.

The affidavit of Mary A. Dutch purports to deal with the merits of the cause, and is clearly inadmissible in aid of the pending motion. *Bohanan* vs. *Nebraska*, 118 U. S., 231.

Wherefore the appellant submits that said affidavit should be excluded.

The following are the additional affidavits above referred to and made part hereof:

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1886.

SAMUEL S. CISSELL, *Appellant*,
*vs.*
ANTHONY M. DUTCH, *et al.*
No. 437.

Robert Downing, a witness of lawful age, being duly sworn according to law, upon his oath, deposes and says that he is engaged in business at 1320 9th street, N. W., being in square 367, city of Washington, District of Columbia, and is well acquainted with sub-lot "H," square 367, and its value, and has been acquainted with the same for more than fifteen years last past. From affiant's purchases in said square 367, and from information gathered from sales of real estate in the vicinity of said lot "H," affiant states that said lot was worth at least $1.25 per foot when purchased by Mr. Cissell, the appellant, and it has continued to increase in value ever since his purchase, to wit: Ever since May, 1882.

ROBT. DOWNING.

Subscribed and sworn to before me this 28th day of February, A. D. 1887.

G. W. BALLOCK,
*Notary Public.*

Address:
1320 9TH STREET, N. W.

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1886.

SAMUEL S. CISSELL, *Apellant*,
*vs.*
ANTHONY M. DUTCH, *et al.*
No. 437.

George A. Hyde, a witness of lawful age, being duly sworn according to law, upon his oath deposes and says that he was

raised in the city of Washington, D. C.; that he has within the last year purchased three houses in square No. 306, and is well acquainted with the values of real estate in said city. That he has been acquainted with the lot of ground known as sub-lot "H" in square 367 in said city for the last ten years and its value. That it fronts, 23 feet and 9 inches on O street between 9th and 10th northwest, and is 115 feet deep and contains 2731 square feet of ground. That it was worth at least $1.25 per square foot when purchased by Mr. Cissell the appellant, to wit: in May 1882, and it has continued to increase in value ever since, and is now worth at least $1.50 per square foot or $4,096.00 for the whole lot.

GEO. A. HYDE,
Address, 1412 35th st. N. W.

Subscribed and sworn to before me this 28th day of February, A. D. 1887.

G. W. BALLOEH,
*Notary Public.*

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1886.

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SAMUEL S. CISSELL, *Appellant*,
*vs.*
ANTHONY M. DUTCH, *et al.* } No. 437.

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Zephaniah Jones, a witness of lawful age, being duly sworn according to law, upon his oath deposes and says that he owns real estate in the city of Washington, District of Columbia; that he is well acquainted with the property known as sub lot "H," square No. 367, in said city of Washington, District of Columbia, said lot fronting 23 feet and 9 inches on O (O) street northwest, between 9th and 10th

streets, with a depth of 115 feet to a 15 foot alley. That he has been well acquainted with said property and its value for the last ten years or more; that it was worth at least $1.25 per square foot when purchased by Mr. Cissell, the appellant, and has gradually increased in value ever since his purchase, and is now worth at least $1.50 per square foot.

Z. JONES,
Address, 1104 9th street, N. W.

Subscribed and sworn to before me this 28th day of February, A. D. 1887.

G. W. BALLOCH,
*Notary Public.*

The appellant, therefore, submits that the motion to dismiss should be overruled with costs.

Respectfully submitted,

T. A. LAMBERT,
*Solicitor for Appellant.*